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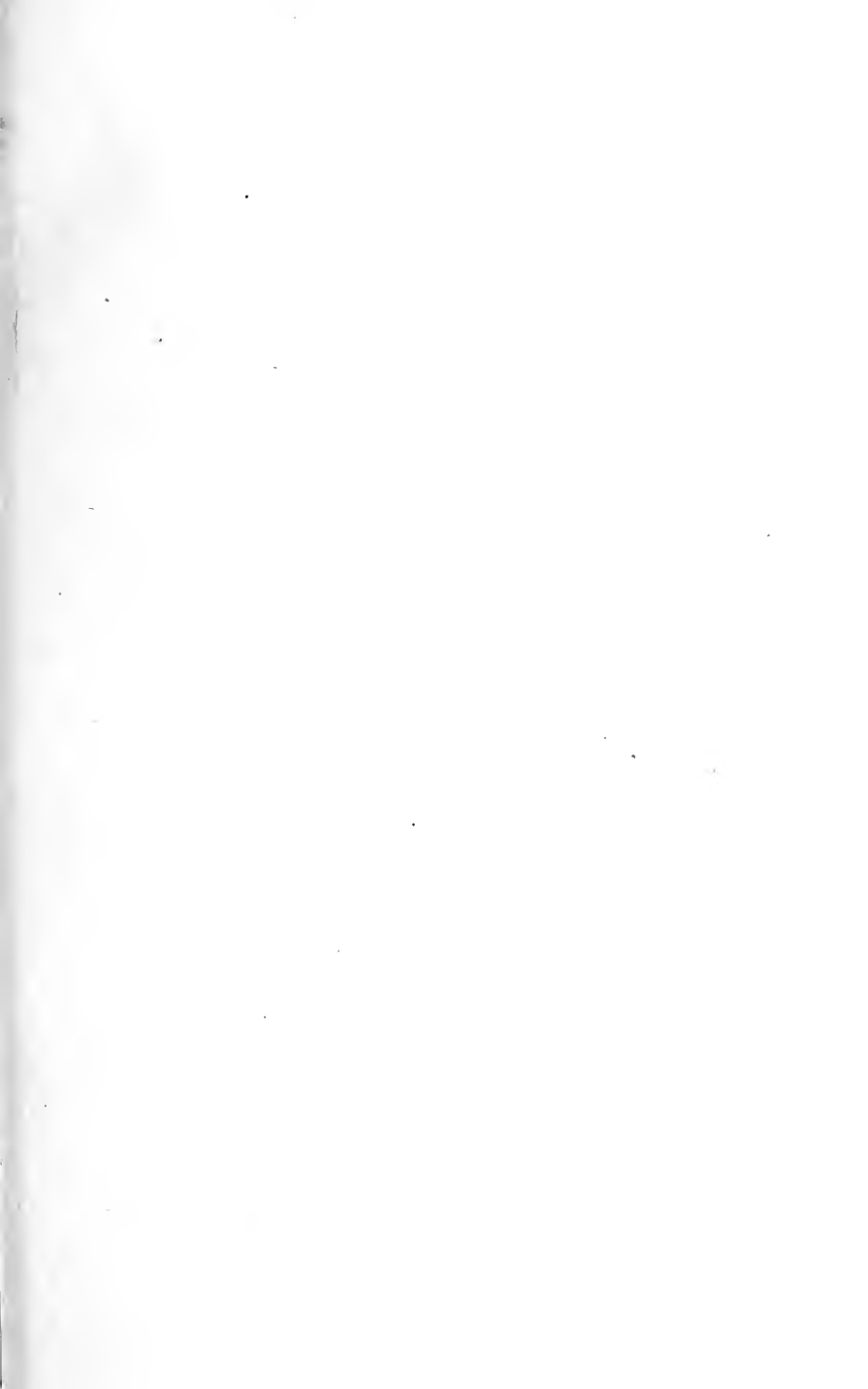
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# CONVEYANCING IN PENNSYLVANIA

With Forms, and Decisions to Date.

BY  
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Of the Philadelphia Bar.

PHILADELPHIA:  
THE GEORGE T. BISEL CO.  
Law Booksellers, Publishers and Importers

1913

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## PREFACE.

Being appointed some time ago to conduct a course in Conveyancing, the author had occasion to seek for a book suitable for use as a guide for those taking the course. While excellent works have been written on conveyancing, no book has been written which covers the modern practice or forms. The author therefore was compelled to write out his own lectures and while doing so conceived the idea of enlarging them so as to make a compact and practical book for the use of all persons transacting a real estate business.

The modern conveyancer, whether lawyer or layman, not only wants to know the law of conveyancing but what to do and how to do it. With this thought in mind the author has endeavored to set forth the law of conveyancing as clearly and concisely as possible and with ample citation of authorities. Everything obsolete has been omitted. Little space has been used discussing doubtful propositions of law. The dangerous shoals have been pointed out and the method to avoid them set forth. Liberal use has been made of forms to illustrate the text and many more have been added in an appendix so that it is hoped every form used in modern conveyancing will be found included; a convenience which will probably be appreciated by the busy lawyer, conveyancer and beginner alike.

The methods of carrying on a real estate business have changed radically within the last score of years. The custom of insuring title and making settlements through Title Insurance Companies, especially in the larger cities has developed marvelously. A chapter has therefore been added on Title Insurance Companies, including their mode of transacting business and stating settlements. At the same time a chapter on Title Searching and instructions how to search has also been included for the use of those who still prefer to do their own searching.

The author desires to acknowledge his indebtedness to Albert H. Ladner, Jr., Esq., of the Philadelphia Bar, for many valuable suggestions and forms embodied in this book.

GROVER CLEVELAND LADNER.

PHILADELPHIA, PA., October 1, 1912.

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## PART I.

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### CHAPTER I.

#### CONVEYANCING. ESTATES IN LAND. TITLE.

##### SECTION I.

##### 1. Definition of Terms. Conveyancing, Land, Title.

Conveyancing has been defined as the science of transferring title to land (Mitchell on Conveyancing in Pa. 258). To properly understand this definition we must first understand the meaning of the words land and title.

Land is defined by Blackstone as comprehending all things of a permanent substantial nature (2 Blk. 16). In the earliest days a very sound and natural distinction was made between things movable and things immovable. The former became known as personal property and the latter became known as real property. If, then, real property is something immovable, land is real property. So also anything that is substantially annexed or fastened to the land, such as a house, becomes immovable. Hence it becomes real property. Properties movable and im-

movable are from the very nature of their distinction so essentially different that it is not difficult to see why different methods of transferring ownership in them should have arisen in the law. Ownership of a horse can be transferred by a physical delivery of the animal, but land cannot be delivered in the same way. Hence a totally different method was evolved to transfer land.

The other word of our definition to be explained is title. What is title? Title is best defined as the evidence of ownership of land. Conveyancing, therefore, means the science or method of transferring the evidence of ownership of a permanent, fixed, immovable thing. As intimated this method is so totally different from the method of transferring ownership of personal property that it has been well termed a science. We will, therefore, later consider title, what it is, how acquired and how transferred.

## SECTION II. ESTATES IN LAND.

### 2. Definition of Kinds of Estates.

Before proceeding to consider the evidence of the ownership in land we must first understand the quantity of a person's ownership in land, *i. e.*, estates in land. The term estate is doubtless familiar to the reader and the question is often heard, "What estate does such and such a person have in a certain piece of land," meaning of course what is the quantity of his interest. Does he own it absolutely, does he merely lease it or does he hold it for life? Estate means a quantity of ownership in land and is to be distinguished from title which is the evidence of ownership of that quantity, be the quantity great as a fee, or small as an estate for years.

Blackstone (2 Blackstone 104) divides estates into two general divisions, each of which are subdivided as follows:

Estates of freehold	{	Fee simple.	{	For one's own life.	
		Life Estate		For the life of another.	
		Estate by the curtesy.			
		Dower.			
Estates less than freehold	{	Estate for years.			
		Estate at will.			
		Estate at sufferance.			

From the table it will be seen that an Estate of Freehold is any estate of uncertain duration other than an Estate of Will. The only freehold estates at the present time which still persist in the law are these above set forth. At common law there were many others such as Estates Tail; but in order not to confuse the mind with terms that are obsolete, we will confine ourselves to those that are still in use. Those interested in the historical side of the development of estates in land we refer to the second book of Blackstone's Commentaries.

### 3. Freehold Estates.

*A Fee Simple Estate* is the largest estate that a man can have in lands. It is the pure simple unconditional and absolute estate (Mitchell on Real Estate and Conveyancing 91). It is commonly called an estate in fee. It is the estate with which we are most usually brought in contact and represents absolute ownership of land.

*A Life Estate* as the name indicates is an estate for life. It may be granted for the grantee's own life or for the life of another; in any event to be a life estate it must cease with the life of the person for the length of whose life it was granted.

*Estates of Dower and Curtesy* are in reality life estates and could be treated as subdivision thereof. However, as they arise differently from the ordinary Life Estate we have set them apart.

*An Estate of Dower* is an estate created by mere operation of the law. It is the one-third interest which a married woman has in all land owned in fee which the husband had at the time of and after his marriage. Should the wife survive her husband she becomes entitled to said one-third of all his real estate for and during the term of her natural life (See page 184).

*An Estate of Curtesy* is also an estate which arises by operation of law. It is the right which vests in the husband upon marriage to enjoy upon his wife's death for and during the term of his natural life all of the real estate which she owned in fee. At common law an estate by curtesy never vested until the birth of a child, but now it vests upon the marriage even though there be no issue (See page 182).

### 4. Estates Less Than Freehold.

*An Estate of Years* is an estate which is let unto another to enjoy for a stipulated time. It is an estate granted for a limited

definite period of time. Whether given for one month or for one year or for two years it is nevertheless an estate for years. The distinguishing feature about it is that it comes to an end at a known certain definite time.

*Estate at Will* is where lands are let by one man to another to hold at the will of the owner who is known as the lessor\* or it may be created to continue at the will of the lessee, that is the party receiving the estate.

*An Estate at Sufferance* is where one comes into possession of the land by lawful means, but keeps it afterwards without any title at all. *E. g.*, a tenant in possession after the lease has expired, is a tenant at sufferance so long as the owner suffers, or permits him to remain.

### 5. Joint Estates.

By joint estates are meant such estates as are vested in more than one person at the same time, in the same land. At common law there were four kinds: Estates in Joint Tenancies, Coparcenary Estates; Tenancy in Common and Estates by Entireties. The first two are obsolete and no longer require much consideration; the other two survive to the present day, the last one especially being frequently met with in modern conveyancing.

5-A. *An Estate in Joint Tenancy.* At common law a joint tenancy in land existed whenever two or more persons acquired land by one and the same instrument (Mitchell on Real Estate and Conveyancing in Pa. 245). Each party to such an estate was considered in law as having vested in him the undivided share of the whole estate. Thus it followed that if one of two joint tenants died his right survived to the other. This effect could not be avoided nor could either compel a division of the estate. In Pennsylvania this estate has been rendered obsolete by the Act of March 31, 1812 (5 Smith Laws 395), which took away from joint tenancy the incident of survivorship and converted it into a tenancy in common. Trust Estates alone are excepted and between joint trustees the right of survivorship still exists.

5-B. *Estate in Coparcenary.* This is an estate defined by Blackstone (2 Bl. Com. 187) to be one where lands of inherit-

\*The reader is probably familiar with the significance of the terminations *or* and *ee* in legal terminology, viz: that *or* denotes the doer of the act, *ee* the one to whom the act is done. A grantor, he who grants, grantee, he who receives. Vendor, he who sells; vendee, he who buys.

ance descend from the ancestor to two or more persons. This estate is obsolete; it no longer exists in Pennsylvania because the intestate laws of this commonwealth provide that where lands descend to several persons under its provisions they shall take and hold as tenants in common.

5-C. *Tenancy in Common*. Is where two or more persons not husband and wife have an undivided interest in the same land. As the name implies, it means land held in common. Each co-tenant is considered in law as being possessed of the whole of an undivided part not of an undivided part of the whole. It, therefore, follows there is no survivorship in this species of joint estate and any one of the co-tenants may compel partition of the whole or devise his portion to his heirs. Since the Act of 1812 all estates except estates by entireties (See Par. 5-D) and trust estates held in Pennsylvania by a plurality of persons are tenancies in common.

5-D. *Estate by Entireties*. In our definition of the Estate of Tenancy in Common it will be observed we excepted husband and wife. This, because an estate vested jointly in husband and wife would be an estate by entireties. It differs from a tenancy in common in that the incident of survivorship is present in this estate, and as Blackstone explains "if an estate in fee be given to a man and his wife they are neither properly joint tenants or tenants in common for husband and wife being considered one person in the law they cannot take the estate by moieties (parts) but both are seised by the entirety." Husband and wife cannot hold jointly in any other way. Thus, where lands were conveyed to husband and wife their heirs and assigns to hold as tenants in common and not as joint tenants; the court held that the clearly expressed intention to make the husband and wife tenants in common could not be regarded (*Stuckey vs. Keefe*, 26 Pa. 397; *Hoover v. Potter*, 42 Super. 21; note page 280).

A tenancy by entireties arises whenever an estate vests in two persons who at the time when the estate vests are husband and wife (*Klenke Estate*, 210 Pa. 572; *Myers Estate*, 232 Pa. 89). This estate may be created not only in real property but also in personal property (*Brainberry's Estate*, 156 Pa. 628). Upon the death of either husband or wife the survivor takes the whole estate and his estate dates not from time of death of the other, but from the date of the deed. Thus, if a judgment lien is entered against the husband who holds an estate by entireties

and the husband dies, the judgment lien does not bind his wife's estate because her estate relates back to the deed and so antedates the judgment (*Hertzel v. Lincoln*, 216 Pa. 60). Such a judgment would not bind the joint estate of the husband and wife but only the expectant interest of the husband. Hence the husband and wife could notwithstanding such judgment convey away a clear unencumbered marketable title free from its lien. "The owner of such lien must hold it subject to its possible extinction in either of two events, the predecease of the husband, or the alienation of the estate by the joint act of the parties. The efficiency of the lien depends upon the non-happening of either" (*Beihl v. Martin*, 236 Pa. 528). But should the husband survive the judgment remains a valid lien against his estate, and would even be prior in lien to a mortgage dated after its entry, executed by both husband and wife (*Fleek v. Zellhaver*, 117 Pa. 213). Partition of this estate cannot be compelled and the incident of survivorship cannot be divested unless both husband and wife join in the deed. In no other way can this be done for even a divorce from bonds of matrimony can not convert an estate by entireties to one of tenancy in common (*Alles v. Lyon*, 216 Pa. 604).

### SECTION III.

#### TITLE, KINDS OF.

##### 6. Title. What it is.

Title is the evidence of ownership in land. Land cannot be moved; hence if the owner should go on a long journey he must leave it behind. Suppose on his return he finds a stranger in possession. The rightful owner to eject him must rely on his evidence of ownership, in other words, his title. Hence can be seen the necessity of having the title in a convenient permanent form. For this reason have arisen the various methods of preserving this evidence of ownership of land as reflected in the modern recording system of which we will treat later (See Chapter VIII, page 158). Title may be good or bad or occupy an intermediary position such as weak. Let us begin at the bottom of the ladder and work up. Of course an absolutely bad title is no title at all, the lowest form of title is

*Naked Possession or Actual Occupation* of land without any right or pretense of right to hold and continue possession. This



one would say at the first blush is practically no title. True to a degree, but the mere possession with no right is something more than no possession with no right, for as we shall presently see, a continuance of such possession adverse to the owner may ripen into an absolutely good title. Then, again, if A should occupy a certain piece of land without any shadow of right and B also having no right, should seek to eject him, B cannot argue A's lack of title, for the settled rule of the law is that the plaintiff seeking to eject another must rely solely on the strength of his own title; he cannot recover on the weakness of his adversary's (*Lane v. Reynard*, 2 S. & R. 65).

#### 7. Right to Possession.

The next higher grade of title is the right to possession. The right to possession springs out of a good title, it belongs to him who has a right to the property. It passes with the right of property. Suppose A purchases a piece of land in Kentucky and when he visits the property he finds a stranger in possession who refuses to remove. Here it will be seen the stranger has the *actual possession* while A has the *right to possession*. Suppose A without commencing suit to eject the stranger should transfer his title to B. B immediately has the right to possession although he actually never entered into possession. As against the stranger his right would prevail.

#### 8. Perfect or Good Title.

Finally the perfect title exists where the person who has the possession has also the right to possession and right of property. He has, what we might call a good and complete title. Possession, actual or constructive, is necessary or the title is not complete. To give an example: Suppose A has a complete paper title by which we mean that the evidence of his right forms a perfect chain whether by deed or will. Suppose now, X enters possession of the premises during A's absence and refuses to vacate on A's return. A is the record owner and has a complete chain of title. Should he proceed against X he will prevail. But suppose A does nothing for twenty-one years and then sells his right to B. B gets the same complete paper title, but X can no longer be ousted. X's title now prevails. He has gained what is termed a title by adverse possession. The paper title is still the same but now it is worthless.

### 9. Marketable Title.

This leads us to consider what we term a marketable title. A marketable title is not to be confounded with a good title. Strange as it may sound a good title may not be marketable. Speaking strictly from a legal standpoint there is no such a thing as a doubtful title. A title is either good or bad as far as the court is concerned but this situation is conceivable. A has a perfect title to some land. B enters an agreement to purchase it. Then he learns that a stranger has been in possession for ten years. The title of A is undoubted; he can eject the stranger and so can his successor, but to do so requires the expense, annoyance and hazard of a law suit. Legally A's title is good, perfect, but from a practical standpoint it is doubtful, therefore, unmarketable. No one buys the hazard of a law suit unless at a greatly reduced figure. An unmarketable title has been well defined by the Supreme Court of Pennsylvania, as a title which exposes the party holding it to the hazard of litigation (*Reighard's Estate*, 192 Pa. 108; *Dohnert's Appeal*, 64 Pa. 311; *Christ Church v. Clark*, 47 Pa. Superior Ct. 286; *Stone v. Caster*, 48 Pa. Superior Ct. 236).

It must, however, be remembered that not all objections render a good title unmarketable and the question as to what is and is not marketable title is too large a subject to develop in this book, but in practice the difficulty is avoided by defining in the agreement of sale what the parties mean by a marketable title and it is usually done by inserting the following clause: "The title to be good and marketable and such as will be insured by any title insurance or trust company in Philadelphia" (*Srolovitz v. Margulis*, 35 Pa. Superior Ct. 252) (or specify the city where settlement is to be made). In this way it will be observed that an objection raised by a title company makes the title unmarketable as agreed to between the parties.

### 10. Equitable Title. Equity.

To properly understand the difference between a legal title and an equitable title we must understand the meaning of the word equity. Equity is a difficult word to define. Blackstone (*Blks. Introduction*, Sec. 2, page 61) adopts the definition of Grotius, who says that "Equity is the correction of that wherein the law (by reason of its universality) is deficient." But this

definition like all others requires explanation. Bispham, in his admirable book on Equity Jurisprudence, explains the meaning of equity by setting forth its history rather than by attempting to define it, and we cannot do better than to adopt his method.

Historically the fountainhead of English justice was the sovereign, the King. At the time of the Norman Conquest and immediately thereafter the law was administered by the King and a certain council which he convened from among the lords of the realm. From this council there developed the courts later known as the Court of King's Bench, the Court of Common Pleas, etc. In all of these courts there was administered justice according to the rules and precedents of the common law. Under these rules and precedents the party injured was always entitled to a judgment of money damages to compensate him for his injuries. As time passed it became evident that money damages awarded after an injury was not always a sufficient compensation for the injury suffered. *E. g.*, suppose a man had a beautiful grove of shade trees and his neighbor out of pure wantonness cuts down a shade tree, the next day cuts down another and announces his intention of continuing to do so until all are gone. The injured man can, of course, sue and recover damages. But money damages, while they may punish the wrongdoer cannot replace the trees. The court of law could not prevent the trespasser from continuing his wanton trespasses. It could only give damages to the grieved party. Again, Suppose A agreed to sell a certain valuable painting to B and later refused to carry out his agreement, B could sue him, but money damages would not give him that certain painting and if it were the only one of its kind manifestly no amount of damages could redress the injured party.

Again, X has a stream of water running through his place which he uses to run his mill, Y who is up stream diverts the water, leaving X's mill high and dry. The common law court could give X damages, but his stream was gone forever. Thus, examples could be multiplied where the common law by reason of its inflexibility (universality) afforded no proper relief to the injured party. Now, as the King was the Supreme Judge, or head of Justice, it became natural for the injured subject to whom money damages afforded no relief to petition his sovereign for redress. The King had the power to grant extraordinary

relief if the case warranted it. Usually the King would refer the petition to his chancellor, the official who acted at that time in the capacity of Secretary to the King. These petitions for relief became so frequent that later in the reign of King Edward I, an ordinance (Bispham's Principles of Equity (6th Ed.) 10) was issued for the purpose of relieving the King from the business of attending petitions addressed directly to him, whereby it was provided that "All petitions touching the seal do come first before the chancellor" and further "if the demands be so great and so much of grace that the chancellor and those others cannot do without the King, then they shall bring them before the King to know his will." Soon the practice of presenting the petition to the chancellor in the first instance became firmly established. As applications increased it became necessary for vice chancellors to be provided and so arose a separate court of justice known as the Court of Chancery or Court of Equity, in which court a suitor who had no adequate remedy in the common law court could get relief. This, therefore, is what is meant by Grotius in the definition above given that equity is the correction of that wherein the law is deficient. The Equity Court has power by injunction to restrain a trespass such as set forth in the example on page 25, and to compel A to pass over the specific painting which he agreed to sell B, and compel Y to return the stream to its original bed. But to the present day consistent to the cause which gave it its origin, the equity court will take jurisdiction of a matter only when the suitor has no adequate remedy at law. As America was colonized by the English people who brought with them their native customs and laws, America inherited both the common law and equity of the Mother Country and retained them after the revolution. Pennsylvania, to be sure, administered her equity under common law forms during the early part of the 19th century, but later the legislature conferred upon the courts of law, equity powers of the English Court of Chancery. And now, while the same judge may sit either as a law judge or equity judge, when he sits as equity judge or chancellor, the practice of the court of equity is strictly adhered to. In some States, New Jersey, *e. g.*, separate courts of law and equity are still maintained, although most of the States as well as England have abolished separate equity courts and like Pennsylvania have conferred equity powers upon the judges of law courts who at certain times sit as chancellors and administer equity according to the equity practice, forms and rules.

Returning now to the question of the difference between a legal title and equitable title, we find that according to the common law the person who had the title to land was the only one recognized. The common law courts would not recognize the right to the title as being in any other person. Equity, on the other hand, being unfettered by the precedents of the common law, recognized rights which the common law would not entertain. *E. g.*, suppose A agreed to sell his land to B, and then subsequently refused to do so. The legal title of course remained in A, but the right to the title was really in B. B in all fairness should have the land upon payment of the purchase price because A agreed to give it to him. Yet B's right to title was not recognized in the common law court. B might recover damages for A's breach of contract, but he could not recover the land. Equity, however, stepped in to correct this deficiency of the law. It recognized the fact that B, although he had no title to the land in the legal sense of the term, nevertheless had a right to have that title transferred to him. So the chancellor compelled A to give title to B and accept the money. An equitable title, therefore, is such a title as is recognized by a court of equity while a legal title is such as is recognized by a court of law. Another example of equitable title is a trust. A trust is created by giving title of property to one person to hold for the use of another. In a trust, therefore, the legal title is in one person and the beneficial use or ownership of the property is vested in another. The person who has the legal title is called the trustee. The person for whose benefit the trust exists is called the Cestui que trust. The Cestui que trust has no standing in a court of law, but in a court of equity his right prevails. His title is, therefore, an equitable title.

#### SECTION IV.

##### HOW TITLE MAY BE ACQUIRED.

##### 11. May be Acquired in Three Ways.

We have thus considered what title is, and the kinds that exist. We will now consider how title may be acquired and transferred. Blackstone divided the methods of acquiring title to land into two general classes, viz: 1st: Title acquired by *Purchase*, and, 2d: Title acquired by *Descent*. For the sake of convenience we will take a subdivision of his first class which he called Title by

*Perscription* and constitute it a third class, entitled *Title by Adverse Possession*.

**12. Definitions of Title by Descent, Purchase Adverse Possession.**

1. *Title by Descent* is title acquired by hereditary succession. That is to say, such title that is acquired by the heirs of the prior owners.

2. *Title by Purchase* we will define as any other method of acquiring title other than by descent or by adverse possession as *e. g.*: by the owner's act, agreement, will or gift.

3. *Title by Adverse Possession* is such title as is acquired by holding possession of the property adversely to the owner for twenty-one years.

In order to logically present this book we shall first briefly consider *Title by Adverse Possession*, then *Title by Purchase* with the exception of title acquired by will and finally *Title by Descent*, including title by will.

## PART II.

### CHAPTER II.

#### TITLE ACQUIRED BY ADVERSE POSSESSION.

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#### SECTION I.

##### DEFINITION AND ORIGIN.

#### 13. Origin of Title by Adverse Possession.

The method of acquiring title by adverse possession results from the policy of the law to limit the time for bringing actions to recover property, to a reasonable time. As said by the Supreme Court, "No person ought to be permitted to lie by whilst transactions can be fairly investigated and justly determined until time has involved them in uncertainty and obscurity and then ask for an inquiry (*Foulk v. Brown*, 2 Watts 215). Accordingly all jurisdictions have fixed a time limit in which actions to determine rights must be begun. In Pennsylvania the time limit is prescribed by a statute commonly called Statute of Limitations.

#### 14. Statute of Limitations in Pennsylvania.

The Statute of Limitations in Pennsylvania relating to land as amended by later acts now provides in substance that actions to determine rights in land must be commenced within twenty-one

years after the right of action accrues. Otherwise such rights are forever barred (Act of Mar. 25, 1785, 2 Sm. L. 300, sec. 2). But persons who are under a disability such as insane, under age, or in prison have nine years longer, in other words those under a disability have thirty years in which to bring their actions from the time it accrues (Act of April 22, 1856, P. L. 532, sec. 1). *Title acquired by adverse possession* may be recorded. See Act of May 31, 1901, P. L. 352, of which we will treat hereinafter (Par. 23).

*What is necessary to gain title by adverse possession.*—In order to gain a title by adverse possession the possession must be adverse and hostile to the owner for the period of twenty-one years or thirty years if the owner is under disability as above set forth. What constitutes adverse possession depends, of course, more or less upon the general circumstances of each case. The general rule is laid down by the Supreme Court of Pennsylvania in *Hawk v. Senseman*, 6 S. & R. 24, wherein it is said that the kind of possession necessary to obtain title against the real owner is, an "*actual, continued, visible, notorious, distinct and hostile possession*." The owner does not forfeit his title to the first straggler who sets himself down on his land; but the policy of the law for the sake of quieting men's possessions, confers the possession right itself upon him who has entered under an adverse claim and held a notorious possession and occupation for twenty-one years." By analyzing this definition it will be seen that four requisites are essential to gain a title by adverse possession:

1. The possession must be actual.
2. It must be continuous.
3. It must be visible and notorious.
4. It must be distinct and hostile.

## SECTION II.

### REQUISITES TO ACQUIRE SUCH TITLE.

#### 15. Possession Must be Actual.

We have seen that the rightful owner has by virtue of his title constructive possession of the land. Therefore, the stranger must take actual possession of the property to oust this constructive possession. Actual possession sufficient to ultimately vest title in the stranger may arise from the following acts: residence on



the land, erecting buildings, enclosing it with a fence (*Hughes v. Pickering*, 14 Pa. 297). No particular acts, however, are necessary to establish actual possession but there must be some positive act inconsistent with the right of the real owner.

**16. Possession Must be Continuous. Tacking Interests.**

In order to ripen into a legal title the possession must be continuous and uninterrupted (*Pederick v. Searle*, 5 S. & R. 236; *Duffy v. Duffy*, 20 Superior Ct. 25). No single act of trespass or a series of occasional journeys to the land are sufficient, the occupation must be continuous. In *Stephens v. Leach*, 19 Pa. 262, it was said, "A man endeavoring to gain a title by adverse possession is bound to continue a positive appearance of ownership by treating the property as his own and holding it within his exclusive control.

**17. Tacking Interests.**

The continuous possession for twenty-one years need not necessarily be by one person. It may be by several persons provided the one derives his actual possession from the other. Thus, when A entered upon land, improved it and after staying a few years gave up his improvements and possession to B who stayed nineteen more years before an action was commenced by the owner to eject him, it was held that the twenty-one years must be counted from A's occupation (*Hughes v. Pickering*, 14 Pa. 297). This is called technically "tacking interests." But it must be remembered that for the interests of such trespassers to be "tacked" the one must derive his possession from the other (*Moore v. Collishaw*, 10 Pa. 224).

**18. Possession Must be Visible and Notorious.**

Of course a secret occupation or claim of right could not be guarded against. Hence the law requires that the possession must be visible and notorious (*Schrack v. Zubler*, 34 Pa. 38).

**19. Possession Must Be Hostile.**

This means the possession must be adverse to the owner. The stranger's title must be hostile to the owner's and not subordinate to it, *e. g.*: If the owner should permit a friend to occupy the premises without fixing a term for such occupation even though such occupation were continued for fifty years no title

could be acquired against the owner, for occupant claims his possession not adverse or hostile to but subordinate to the owner. Otherwise, anyone whom the owner let into possession might obtain title upon mere failure of the owner to eject him in twenty-one years. Therefore, the hostility is an important essential. He who is in possession must claim against the whole world continuously and aggressively (*Stephens v. Leach*, 19 Pa. 262). As long as one claims under the owner, title by adverse possession can never be acquired.

#### **20. Against Whom Title by Adverse Possession May Be Acquired.**

Title by adverse possession cannot be acquired against the Commonwealth or a municipality (*McGuire v. Wilkes-Barre*, 36 Superior Ct. 418) nor against anyone with whom the claimant occupies in privity as for example: Tenant and Landlord, Vendor and Vendee (*Connor v. Bell*, 152 Pa. 444; *Hads v. Tiernan*, 213 Pa. 44), Tenants in Common (*Hayes' Appeal*, 123 Pa. 110), Trustees and Cestui que Trust (*Scott v. Gallagher*, 14 S. & R. 333), Husband and Wife (*Husband and Wife, Collins v. Lynch*, 157 Pa. 246). As against the Commonwealth, title by adverse possession can never be acquired, as against the others; it can only be acquired by the party in possession under the relation expressly, openly and notoriously avowing that he holds possession not by virtue of the relation but adversely to it. The twenty-one years will not run until the respective relation is broken by such open hostile and notorious avowal of breach of the relation.

#### **21. How Adverse Possession May Be Averted.**

In general the statute may be said to run from the time an action in ejectment might have been begun. The best way to defeat the running of the statute is to commence an action of ejectment against the occupant. Mere notice of title by the one out of possession to the person in position will not prevent the running of the statute (*McCombs v. Rowan*, 59 Pa. 414).

Neither will a clandestine re-entry (*id.*); but actual expulsion of the occupant and a physical resumption of possession will arrest the statute; but care must be taken in pursuing this remedy lest the owner make himself liable for indictment for forcible entry (*Comm. v. Schaffer*, 32 Pa. Superior Ct. 382).

## SECTION 3.

## NATURE OF TITLE ACQUIRED. ACT OF 1901.

**22. Title So Acquired is Perfect and Good.**

Up until the expiration of the twenty-one years the inchoate title which the claimant may have can be lost by abandonment of the title; but after the expiration of twenty-one years there is vested in the claimant an indefeasible title in fee simple and subsequent neglect to keep up possession cannot confer any equity upon the purchaser of the outstanding paper title which the statute barred (*Shall v. Williams Valley R. R. Co.*, 35 Pa. 191), but recently the rule had been modified as to certain parties by the Act of May 31, 1901, as noted in the next paragraph.

**23. But Must Be Recorded if Owner Remove.**

By the Act of May 31, 1901, P. L. 352, it is now provided that the acquired title by adverse possession may be recorded and where the claimant leaves possession he must record it in six months after his removal; else it will not be good as against a *bona fide* purchaser or mortgagee without notice, of the holder of the paper title. This act prescribes the form and method of recording. The form of deed for recording title by adverse possession is as follows:—

**FORM OF CLAIM OF TITLE ACQUIRED BY ADVERSE POSSESSION TO BE RECORDED.**

I, JOHN ROBERTS, of Ivyland, in the County of Bucks, State of Pennsylvania, do hereby affirm and declare that I have acquired title in fee by twenty-one years adverse possession to the following described land, situate in Rockhill Township, County of Bucks, State of Pennsylvania, to wit:—

BEGINNING at a heap of stones at the corner of Frank Peterson's land; thence along the same north forty-six degrees, west six perches to stones for a corner of William Thompson's land; thence along the same south forty-two degrees, west 12 perches to a post, a corner in the line of Samuel Andrew's land; thence by the same south thirty-seven degrees, east forty-eight perches to a stone for a corner; thence north seven degrees, east seventy-three and five-tenths perches to the place of beginning, containing five acres and sixty-two perches of land, more or less.

Adverse entry was made upon said land by me on or about the 21st day of March, Anno Domini 1886, and continued until about the first day of June, Anno Domini 1912.\*

At the time of said entry, Isaac Brown (naming some person or persons in the line of existing title or legal title, as nearly as the same may be, the real owner of said lands at the time of such entry) was owner or reputed owner of said land and I claim adversely to him.

WITNESS my hand and seal this first day of August, A. D. 1912.

JOHN ROBERTS. (Seal.)

STATE OF PENNSYLVANIA }  
COUNTY OF BUCKS, } ss:

BE IT REMEMBERED that on the first day of August, A. D. 1912, before me the subscriber, a notary public in and for the Commonwealth of Pennsylvania residing at Doylestown, personally appeared John Roberts, who being duly sworn did declare and say that the facts set forth in his foregoing Statement of Claim are true as he verily believes.

WITNESS MY HAND AND SEAL the day and year aforesaid.

THOMAS STONE, (Seal.)

*Notary Public.*

My commission expires May 1, 1913.

#### 24. Title to Lesser Estates.

Where the holder of a life estate is deseised, that it put out of possession by his failure to oust one who is in actual possession for twenty-one years, the deseissor gets only the title to the life estate, which ends with the death of the life tenant. It will be remembered that the statute only runs from the time the right of action accrues. In such a case as the right of action of the remainderman accrues only on the death of the life tenant, his interests are not barred until twenty-one years thereafter.

\*If the possession of the claimant is tacked on to that of others who have preceded him (See Par. 17), it should be stated as follows: Adverse Entry was made upon said lands by Thomas Jones on or about the 21st day of March, Anno Domini 1886, who continued in possession until about the first day of December, Anno Domini 1896, and was succeeded therein by William Smith, who continued in possession until about the ninth day of January, Anno Domini 1905, and was succeeded therein by me, who continued in possession until about the first day of June, Anno Domini 1912.

**25. Title by Adverse Possession Is Marketable.**

The title by adverse possession is purely legal and is as perfect a title as though the holder of it had a deed of record. Since the Act of 1901 he may now record it and so have a record of it. It is good and marketable and as such recognized and enforced by the Courts (*Bell v. Moredock*, 54 Pitts. L. J. 379; *Stroud v. Prager*, 130 Pa. 401).

## PART III.

### Title by Purchase.

#### CHAPTER III.

##### ALIENATION. WHO MAY TAKE, HOLD AND CONVEY.

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#### 26. Introduction. Definitions of Term Alienation.

Title by purchase we have seen includes all methods of acquiring title except by title by descent and by adverse possession. It is, therefore, the most common method of acquiring title. Before considering in detail the *method* of acquiring, we must first consider what persons or bodies have the power or right to hold, acquire or convey title to real estate. The capacity to take, to hold and to convey title to real estate, as Professor Mitchell in his excellent lectures on conveyancing says, depends upon a variety of circumstances. "Some persons can take title but cannot hold it. Others can take and hold but cannot convey it." This capacity to take, hold and convey lands is called the capacity to alien or to alienate land and the method of transferring land is technically called the alienation of land which means substantially what we now understand by the term Conveyancing.

#### SECTION I. INDIVIDUALS.

##### 27. Who May Take, Hold and Convey. Individuals. In General.

Any person who has the legal capacity to bind himself by con-

tract, may convey his real estate. The same disabilities which incapacitate him from making a legal contract, incapacitate him from making a valid deed. Keeping in mind the general rule, therefore, that any individual not under a legal disability may freely alienate land, it becomes important to see and understand what these disabilities are. Classified under their respective disabilities, we have: Aliens, Persons of Unsound Mind, Drunkards, Persons Under Duress, Infants, Married Women, *Feme Sole* Traders, Fiduciaries. Since not all of these individuals are not absolutely prevented from alienating, it becomes necessary to consider each one separately.

## 28. Aliens.

At common law, it was deemed for the welfare of England that aliens, that foreign-born residents should be forbidden to hold land or inherit land. Blackstone, however, points out they could purchase land but the moment they did so it was liable to be forfeited to the sovereign (2 Blackstone 293). The harshness of this rule has been greatly relaxed and in most states the alien friend is now under no disability. In Pennsylvania, by statute (Act Feb. 28, 1791, 3 Sm. L. 4), alien friends may take by descent without limit. But under the Act of May 1, 1861, they are permitted to hold by purchase only 5,000 acres and not exceeding \$20,000 in net annual value (P. L. 433). Up to this limit they may take, hold and convey as freely as a native born or a naturalized citizen.

## 29. Person of Unsound Mind.

This heading should be taken to include not only lunatics but idiots and all persons of unsound mind. The law presumes every one sane and the burden is upon him who seeks to establish the want of sufficient mental capacity to execute a deed and such incapacity must be established beyond a reasonable doubt (*In re Gangwere's Estate*, 14 Pa. 417). In most jurisdictions, laws have been enacted providing for methods in which a person may be legally adjudged insane, and such a decree when made is conclusive and binding upon all the world and renders deeds of the lunatic absolutely void. By Pennsylvania statutes the appointment of a committee after inquisition or a guardian by the court, is a decree which establishes the lunacy of the party absolutely and from that time all capacity to contract is gone and

his deed is absolutely void (*Imhoff v. Witmer*, 31 Pa. 243). The inquisition and decree are recorded and this is notice to all the world of the party's insanity and incapacity to contract. The law also provides that it is the duty of the commissioner and jury, sitting to determine the lunacy, to find how long the party has been insane and if he has lucid intervals. During the period from the time of the commencement of insanity so found to the time of the decree, there is a presumption that the party was without capacity to contract, but this presumption may be overcome by proof that the contract or deed was made in a lucid interval. Where the party has never been legally declared insane the question of whether he was or was not insane at the time of the execution of the deed is, of course, a question of fact to be decided by the jury, the burden being upon him who seeks to set the deed aside. The several acts of assembly give to the committee of the lunatic all the powers necessary to manage his estate, but the real estate cannot be sold or mortgaged without authority from the court.

### 30. Habitual Drunkards.

Drunkenness is really a species of temporary mental derangement. To relieve himself from a contract or deed made while intoxicated a party must prove that he was so drunk as not to know what he was doing. The deed of a person executed while drunk is not void but voidable, *i. e.*, it may be confirmed or made good when the grantor becomes sober. To set the deed aside he must disavow it promptly; otherwise the law presumes he means to ratify it. Where, however, a person is habitually intoxicated and is declared an habitual drunkard by decree of court, then he is in the same position as a person adjudged a lunatic, and all his deeds are void.

### 31. Weakness of Mind and Senility.

Mere weakness of mind due to old age, accident or disease is not of itself sufficient to set aside a deed (*Nace v. Boyer*, 30 Pa. 99; *Kleckner v. Kleckner*, 212 Pa. 518; there must be some fraud or mistake before a formal instrument such as a deed can be set aside. However, the court is alert to protect the aged or weak-minded and the chancellor will usually seize on slight circumstances of fraud to set aside a deed so secured (*Hettrick's Appeal*, 58 Pa. 477). In Pennsylvania, by the Act of May 28,



1907, P. L. 290, a method of protecting the property of the aged and weak-minded is now provided. Upon proper application made to the court, by petition filed setting forth that the party is unable by reason of insanity, feeble-mindedness or other mental defectiveness from taking care of his property, the court will fix a time for a hearing, and if convinced that the allegations of the petition are correct will appoint a guardian to protect and conserve the estate of such person. Such guardian has the same powers and is subject to the same duties as a committee on lunacy.

### 32. Infants.

An infant in a legal sense is a person under twenty-one years of age. The law provides that an infant cannot make a contract, the theory being that he is too immature and must be protected against his own folly. There is a certain exception, viz: that he may contract for necessities. But for our purpose we may disregard this. Remembering that his disability results from his incapacity to contract, it follows he can neither contract to acquire title by deed nor convey it by deed. He may, however, acquire title by deed of gift or by devise or by descent since in such cases no capacity to contract is required. The deed of an infant is not void but voidable and he has it in his power when he reaches the age of twenty-one years to either ratify his deed, in which event it becomes good, or disaffirm it in which event it becomes void absolutely; but he must do one or the other within a reasonable time after he arrives at the age of twenty-one years, else the law presumes his failure to act to be a ratification (*Dolph v. Hand*, 156 Pa. 588). The contract, however, is voidable only on the part of the infant. An adult party with whom the contract is made is bound. Upon disaffirmance an infant should return the purchase money received for the property, but if he has spent or lost it, his action in disaffirming is nevertheless effectual even though no return can be made for the consideration (*Shaw v. Boyd*, 5 S. & R. 309; *Ruchezky v. DeHaven*, 97 Pa. 202).

### 33. Persons Under Duress.

Deeds made by persons under duress are voidable and may be set aside by action of the party if done within a reasonable time after the removal of the restraint. By duress is meant some undue compulsion such as threats, actual violence, imprisonment, which prevents the free exercise of the will power of a person

and makes him execute the deed or contract through fear alone. A person, however, is supposed to possess ordinary firmness unless it is shown by reason of age or other sufficient cause he is weak or infirm. The constraint that takes away free agency must be one that is imminent and without immediate means of protection, and such as would operate upon the mind of a person of reasonable firmness (*Sulzner v. Cappeau Lemly, Etc., Co.*, 234 Pa. 162).

#### 34. Married Woman.

At common law a married woman was under many disabilities for, as said by Mitchell (*Real Estate & Conveyancing in Penna.* by E. C. Mitchell 372), "at common law the husband and wife were one person and that one was the husband." In Pennsylvania, step by step married women's rights were increased until the Act of June 8, 1893 (P. L. 344, sec. 5), completed her emancipation. That act provided, "Hereafter a married woman shall have the same right and power as an unmarried person to acquire, own, possess, control, use, lease, sell or otherwise dispose of any property of any kind, real, personal or mixed and either in possession or expectancy and may exercise the said right and power in the same manner and to the same extent as an unmarried person, but she may not mortgage her real property unless her husband joins in such mortgage or conveyance. The second section of the act provides, "Hereafter a married woman may in the same manner and to the same extent as an unmarried person make any contract in writing or otherwise which is necessary, appropriate, convenient or advantageous to the exercise and enjoyment of the rights and powers granted by the foregoing section, but she may not become accommodation indorser, maker, guarantor or surety for another, and she may not execute or acknowledge a deed or other written instrument conveying or mortgaging her real property unless her husband joins her in such mortgage or conveyance." This act is so clear as to require little or no explanation. With the exception of her inability to mortgage her property without joinder of her husband and her inability to become accommodation indorser, maker of a note, guarantor or surety for another, she may do whatever an unmarried woman may do. As Chief Justice Paxson said in *Milligan v. Phipps*, 153 Pa. 208, "It (the Act of June 8, 1893) has emancipated her from the shackles of the common law so far

as her separate property is concerned, and permits her to stand alone and exercise her own judgment."

*Conveyance by a Husband Direct to Wife.*—After the passage of these married women's property acts, it was a question in doubt as to whether a wife could convey direct to her husband if made *bona fide* and without seeking to defraud creditors. The matter is now settled that she can. Although it was necessary for the legislature to pass an act (Act of June 3, 1911, P. L. 631) so declaring in order to overrule the recent case of *Alexander v. Shallala* (228 Pa. 297), which had held she could not. The Act of 1911 provides "That it shall be lawful for a married woman to make conveyances of real estate to her husband as if she were a feme sole" and also that "all conveyances of real estate heretofore made by any married woman to her husband, which had been duly signed, acknowledged and delivered by her are hereby validated and made good in law." The Superior Court, however, in a recent decision has declared the last clause of this act to be inoperative, on the ground that the attempt of the legislature to validate deeds made by married women direct to the husband before the passage of the act, disturbed vested titles and was, therefore, unconstitutional (*Buchanan v. Corson*, Opin. filed Oct. 14, 1912, will probably be reported in 52 Pa. Super.). This decision only renders the last clause of the act ineffective, the first clause permitting such conveyances in the future, still stands.

While the right of a wife to convey to her husband direct had been a vexed question until settled as above, it had been long settled on the other hand that a husband might not only convey directly to his wife for a valuable consideration but he might also convey to her as a gift when not prejudicial to his creditors (*Reagle v. Reagle*, 179 Pa. 89; *Mitchell v. Phillips*, 236 Pa. 311). It has always been considered the better practice in either case to have the married person convey to a third party who in turn conveys to the husband or wife.

### 35. Feme Sole Traders.

A feme sole trader is a married woman authorized by statute under certain conditions to carry on business and trade as though she were sole or unmarried. In Pennsylvania, the Act of May 4, 1855, P. L. 430, sec. 2, provides "that whenever her husband from drunkenness, profligacy or other cause shall neglect or refuse to provide for her or shall desert her, . . . .and her prop-

erty real and personal howsoever acquired, shall be subject to her free and absolute disposal during her life or by will, without any liability to be interfered with or obtained by her husband, and in case of her intestacy shall go to her next of kin as if he were previously dead." For some time there was considerable doubt as to whether this act gave a feme sole trader the right to convey a clear title without joinder of her husband, but it has now been settled that she can (*Elsey v. McDaniel*, 95 Pa. 472; *Simons' Estate*, 20 Superior Ct. 450). Not only can she make a deed as though unmarried, but she can also mortgage (*Heddens' Appeal*, 17 Atl. Rep. 29) her property without joinder of her husband. It is not necessary for her to be actually declared by decree of court to be a feme sole trader but the better practice and safer plan is to have her so decreed and then to recite that fact in the deed of conveyance (*Ellison v. Andersen*, 110 Pa. 486). If never declared a feme sole trader, the facts that bring her within the provisions of the Act of May 4, 1855, should be recited in the instrument of conveyance, although failure to do so will not invalidate the instrument (*Forman v. Hosler*, 94 Pa. 418).

### 36. Fiduciaries.

By a fiduciary we mean one who occupies a relation of trust and confidence with another. The fiduciaries which we will briefly consider are: Trustee, Executor, Administrator and Guardian (*Pennsylvania Conveyancing*, by Christopher Fallon, 91). Mr. Fallon, in his very complete book on conveyancing, says: "Generally speaking, trustees, including guardians, executors and assignees, have no power to sell or convey land unless authorized and empowered by the instrument of appointment or under the direction of the court having jurisdiction over the trust." If there is more than one trustee or guardian all must join in the deed. Where the instrument which creates the trust defines and prescribes any manner in which it is to be executed that method must be strictly followed. Before accepting a deed from a fiduciary a purchaser must, at his peril, ascertain the extent of the trustee's power. As Fallon further says, "A deed simply to AB, trustee, without stating for whom or for what does not afford such an opportunity and is to be considered bad conveyancing." The Golden Rule to be followed is: Look to the instrument defining the powers of the trustee. In *Bayard v. Farmers'*

and Mechanics' Nat. Bank, 52 Pa. 237, the court said: "No purchaser either of land or personally would be safe in buying from a known trustee without looking at the nature and extent of his trust. It is true a trustee may have power to sell, but the power is not a necessary incident to his trust, as it is to the office of an executor. He may have the legal title yet no authority to sell. His sale may be entirely authorized by the instrument which created the trust; it may have been forbidden." In Pennsylvania, the Act of March 14, 1849, P. L. 164, authorizes executors, trustees, etc., to make either public or private sales where not specifically directed. If a public sale is directed, only a public sale can be made and a private one will carry no title (*McCreery v. Hamlin*, 7 Pa. 87).

On the ground of public policy executors and trustees cannot purchase at their own sale. But such a sale, if not avoided by the parties for whose benefit the trusts exist, may be made good by their ratification. If a trustee desires to buy or bid at his own sale he should make application to the court (Act May 22, 1878, P. L. 83).

An executor has no power or right over real estate unless the power be given him in the will, or unless the personal property is not sufficient to pay the decedent's debts, in which case the executor may make application to the orphans' court for leave to sell the decedent's real estate to pay debts. So also an administrator has no power or control over real estate unless the personal property is not sufficient to pay debts in which case he may, as in the case of the executor, petition the orphans' court for leave to sell the real estate. In either case the authority of the fiduciary selling or the decree of the court authorizing him to sell should be set forth in the deed (See form of Executor's Deed, Paragraph 232.)

## SECTION II. ASSOCIATIONS OF INDIVIDUALS.

### 37. The Commonwealth or the State.

Turning now to associations of individuals that may acquire, hold and convey title we will consider, first, The State or Commonwealth; second, Corporations; third, Unincorporated Societies; fourth, Partners.

*The Commonwealth, i. e.*, the State, may purchase, hold, sell, convey, lease and mortgage land like any person. It can gain title by adverse possession but cannot lose it in that way. The

Statutes of Limitations do not run against the Commonwealth and no one can gain title by adverse possession against it (*Bagley v. Wallace*, 16 S. & R. 245; *Com. v. Baldwin*, 1 Watts 54). The Commonwealth has the further power to take land for public purposes except as restricted by the Constitution, and to delegate this right to certain public corporations as provided by law. This power to take land from individuals against their wishes is called the right of eminent domain. The Constitution provides that just compensation must be made to the owners and the various states have prescribed methods laid down by law which must be carefully followed when the right is exercised.

### 38. Corporations.

Corporations have only such right to hold and alien land as is given them by the authority that creates them, *i. e.*, the State. In Pennsylvania, the preamble of the Act of April 6, 1833 (P. L. 167), sets forth that "no corporation either of this state or of any other state though lawfully incorporated or constituted can in any case purchase lands within this State either in its corporate name or names of any person or persons whomsoever for its use, directly or indirectly, without incurring the forfeiture of said lands to this Commonwealth unless such purposes be sanctioned or authorized by an act of legislature." But while a corporation has not the power to purchase land except to the extent authorized by law, still as to such land as the law authorizes it to hold, it may alienate and dispose of it as fully and freely as an individual may do in respect to his own property (*Ardisco v. N. A. Oil Co.*, 66 Pa. 375). Prior to the Constitution of 1874, each corporation was created by special act of assembly and its right to hold land was specified in the creating act. In 1874 the legislature passed a general corporation act which divided all corporations into two classes: Corporations for profit and corporations not for profit. The former are chartered by the Governor of the State and the latter by the courts. Both classes of corporations are authorized to hold, purchase and transfer such real estate as the purposes of the corporation require, not exceeding the amount limited by its charter or by law." Section 6 of Article XVI of the Constitution stipulates that a corporation shall not take or hold any real estate except such as is necessary and proper for its legitimate business.

The title to real estate conveyed to a corporation not authorized to hold it is defeasible only at the pleasure of the Commonwealth. The Commonwealth must commence the proceedings; not anyone who chooses to interfere (*Pittsburg R. R. Co. v. Allegheny*, 63 Pa. 127). If the Commonwealth fails to forfeit the land while held by the corporation, and thereafter the corporation transfers the land to an individual, the individual takes a good indefeasible title (Act of June 15, 1897, P. L. 164). Thus, while a corporation may not hold title it can nevertheless pass a good title to a purchaser if done before forfeiture proceedings are commenced.

### 39. Foreign Corporations.

By foreign corporations are meant such as are chartered in another State, *e. g.*, a corporation chartered under the laws of New Jersey would be a foreign corporation in Pennsylvania. Foreign corporations have no rights outside of the jurisdiction which created them except such as may be given them by the sovereignty in whose domains they seek to carry on business (*Van Steuben v. Central R. R. Co.*, 178 Pa. 367). In fact, a foreign corporation may be excluded from the jurisdiction of a state altogether. They are, however, usually admitted on terms, but they should comply strictly with the general law providing for the conduct of foreign corporations doing business in the state (See Act of June 8, 1911, P. L. 710, as to Registration Requirements of Foreign Corporations). In general, foreign corporations may hold no land in Pennsylvania. Such as they hold escheats, *i. e.*, is forfeited to the state. Certain foreign corporations are excepted, however, and are allowed to hold a limited amount of land (100 acres) if necessary, for the purpose of their business. These corporations so excepted are foreign corporations engaged in the business of and formed for the purpose of the manufacture of any form of iron, steel, glass, lumber or wood, or for the conversion, dyeing and cleaning of cotton or velvet or other fabrics, of and for the manufacture of pyroligneous acids, acetate of lime and charcoal by the process of destructive distillation, or preparation of cattle hair for use, or for the manufacture of carbon dioxide and magnesia and the products thereof and compositions, articles and apparatus from and in connection therewith, or for the manufacture of extracts of wood, bark, leaves and roots, or any other extract for tanning, cleaning,

dyeing or other purposes, or for the manufacture or printing of wall paper, lithographs or prints, and mining and manufacturing of any clay into brick, tile and various other articles and products produced from clay and from clay and other substances mixed therewith, to erect and maintain buildings for such manufacturing purposes, and for offices and salesrooms, or either, within the commonwealth, and to take, have and hold real estate not exceeding one hundred acres necessary and proper for such manufacturing purposes and for offices, dwellings and salesrooms, or either, and to mortgage, bond, lease or convey the same or any part thereof (Act of June 8, 1893, sec. 1, P. L. 389, amending and supplementing Acts of April 13, 1891, P. L. 39, April 28, 1887, P. L. 77, June 25, 1885, P. L. 179, June 9, 1881, P. L. 89).

Also foreign corporations formed for the manufacture of any form of iron, steel, paper, wood pulp, chemical fibre or glass, or for the quarrying of slate, granite, cement rock, stone or rock of any kind, or for the dressing, polishing or manufacturing the same or any of them, or for any mineral springs company incorporated for the purpose of bottling and selling natural mineral springs water, or any company incorporated for the purpose of manufacturing, supplying and sale of ice or manufacturing and selling garden and horticultural implements, and dealing in seeds, plants, bulbs and flowers, or for the manufacture of and sale of foodstuffs and eatables, cement and cement products, and the quarrying of cement rock, or for the manufacture, buying, selling, leasing, using and operation of electrical apparatus and machinery, and articles of every kind appertaining to or in any wise connected with the production, use, regulation, control, distribution, or application of electricity, or electrical energy or products, for any use or purpose, constructing, acquiring, using, selling, buying or leasing any works, construction, or plant, or any part thereof, connected with, or involving such use, distribution, regulation, control, or application of electricity, or the control or use of electrical apparatus for any purpose, and of producing, furnishing, and supplying electricity or electrical apparatus in any form and for any purpose, and to carry on a general manufacturing business are authorized by law, to erect and maintain buildings and manufacturing establishments within the Commonwealth and to take, have and hold real estate to an amount necessary and proper for corporate purposes (Act of April 19, 1901, P. L. 86, as amended and supplemented by the Acts of May 28,



1907, P. L. 266, April 27, 1909, P. L. 173, April 20, 1911, P. L. 68, June 23, 1911, P. L. 1115).

Also foreign corporations, the net profits of which are required by its charter to be applied to religious and charitable uses, engaged in this State in the publication and sale of books, tracts, newspapers, periodicals and such other business commonly connected with publishing and book-selling, who have a duly authorized agent or agents as required by existing laws for the purpose of carrying on business may take, hold and enjoy real estate either in its corporate name or in the name of trustees or agents to an amount not exceeding twenty thousand dollars in clear yearly value or income and to mortgage or convey the same or any part thereof and to lease any part of the buildings erected thereon not requisite for the transaction of their business (Act of June 24, 1895, P. L. 238).

Also foreign corporations formed for the purpose of transportation of passengers and freight by steamboats or other vessels, upon or over any river or waters between this State and any other state, may lease, erect or purchase offices, piers, warehouses and other buildings necessary for its business, and to hold in this State, either in its corporate name or by a trustee or trustees real estate necessary for the transaction of its business, to lease, erect or purchase and maintain any riparian rights for the laying, landing or dockage of its steamboats or other vessels and mortgage and carry said real estate or any part thereof (Act of April 17, 1889, P. L. 35).

Also foreign corporations incorporated for the purpose of the establishment, maintenance and continuance of a ferry or bridge between this State and any other state may hold, erect and maintain piers, offices, warehouses and all other buildings and structure necessary for the maintenance of such ferry or bridge and conducting the freight and passenger business to be moved thereby, and may hold, mortgage, lease or convey such real estate necessary for said purposes (Act of June 6, 1887, P. L. 352).

Also foreign corporations may hold and convey not exceeding three hundred acres of land in the Commonwealth for mining purposes (Act of July 22, 1863,\* sec. 2, P. L. [1864] 1098).

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\*But this act was repealed two years later by the Act of April 23, 1865, P. L. 32, which, however, expressly provided that any rights acquired before the repeal should not be impaired.

Also foreign corporations, or joint stock companies or associations, formed for the purpose of carrying on the business of insurance, are authorized to take, hold and enjoy in any part of this Commonwealth either in its corporate name or by trustees, real estate and premises in which the business is carried on and to mortgage or convey the same and to lease any part of the buildings erected thereon not requisite for the transaction of their said business (Act of June 1, 1881, sec. 1, P. L. 38).

There is one other exception to the general rule that foreign corporations can hold no land in Pennsylvania, and that is, that they may under the Act of May 23, 1887 (P. L. 176), purchase such real estate at a sheriff's sale as may be necessary to protect their lien, but real estate so bought must be disposed of in ten years from date of purchase.\* The Act of June 23, 1911, P. L. 1114, gives to foreign corporations properly registered but not entitled to hold real estate the right to convey away such property as they may have acquired before passage of this act free from any escheat claim of the Commonwealth.

*Right of Corporations to Mortgage in Pennsylvania.*—Such corporations as may hold real estate may mortgage their holdings. Originally this could be done as freely as an individual, but since the Constitution of 1874, certain conditions and restrictions must be complied with as set forth in the General Corporation Act of 1874, certain conditions and restrictions must be complied with as set forth in the General Corporation Act of 1874 (Act of April 29, P. L. 73), and its supplements, and the Act of May 21, 1889, P. L. 257).

#### 40. Unincorporated Societies and Churches.

Unincorporated associations or societies in general cannot hold or alien land in the society name, but the title will be treated as being in individual members just as in a partnership. There is, however, an exception in the case of charitable and religious societies and churches (*Phipps v. Jones*, 20 Pa. 263; *Burton's Appeal*, 57 Pa. 217). The title remains in the charitable society or church and where there is a split in the congregation the title to the property is adjudged to be in that part of the congregation which is in harmony with the laws and customs accepted by the

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\*The time limit of this act was extended for five years by Act of June 8, 1897, P. L. 136, and again for five years by the Act of February 5, 1903, P. L. 4.

whole body before the division took place (*Landis' Appeal*, 102 Pa. 467; *Krecher v. Shirey*, 163 Pa. 534).

#### 41. Partners.

Real estate held by partners for the purpose of the business is regarded in law as forming part of the assets and hence treated as personal property (*West Hickory Asso. v. Reed*, 80 Pa. 38). The question often arises whether real property purchased jointly was intended to be firm property. The Supreme Court in Pennsylvania has held that the mere fact of taking the property in the joint names will not make it partnership property (*Stover v. Stover*, 180 Pa. 425; *Cundey v. Hall*, 208 Pa. 335). To avoid this, the fact that the land is purchased by the firm for the use of the firm's business, should be set out in the deed or some instrument in writing duly filed of record so that individual creditors be not deceived (*Gunison v. Dime Savings Bk.*, 157 Pa. 303; *Cundey v. Hall*, 208 Pa. 335).

## CHAPTER IV.

### METHODS OF ACQUIRING TITLE BY PURCHASE. INSTRUMENTS OF CONVEYANCING. AGREEMENTS OF SALE.

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We will now consider the modern methods of conveying. It is generally known that the actual transfer or conveyance of title to land is made by an instrument called a deed. But before we come to the deed there must have been an agreement between the buyer and seller as to the price to be paid and other terms. This agreement which for reasons to be hereinafter explained must be in writing will be, of course, therefore, our first consideration.

In order to present the subject logically we will consider instruments of conveyancing in the following order:—

1. Agreements of Sale.
2. Deeds.
3. Mortgages.
4. Ground Rents.

#### AGREEMENTS OF SALE.

##### 42. What it is. Definition.

Suppose A desires to buy B's property. After much negotiation both arrive at a mutual understanding and desire to close out the transaction. This understanding embodies the terms and conditions of the sale and must be in writing and signed by the

parties. An agreement of sale may, therefore, be defined as an agreement or contract in writing wherein one party agrees to sell and another agrees to buy real estate under such terms and conditions as is therein set forth.

#### 43. Must Be in Writing. Pa. Statute of Frauds.

It has been considered sound public policy in all states that certain contracts should be required to be made in writing. And in all common law jurisdictions the one kind of contract most universally required to be in writing is the contract relating to sale and creation of interests in land. The first statute requiring contracts concerning the sale and creation of interests in land to be in writing was passed in England in 1676. As it recited in its preamble that its purpose was to prevent frauds, it has ever since been known as the Statute of Frauds and statutes of frauds similar to a greater or lesser extent have been re-enacted in most every state of the United States.

*Pennsylvania Statute of Frauds.*—The Pennsylvania Statute of Frauds is the Act of March 21, 1772 (1 Sm. Laws 389), which provides that “all leases, estates, interest of freehold or term of years or any uncertain interest of in or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery of seisin only, or parol and not put in writing and signed by the parties as making or creating the same or their agents thereunto lawfully authorized by writing shall have the force and effect of leases or estates at will only, and shall not either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates or any former law or usage to the contrary notwithstanding, except nevertheless all leases not exceeding the term of three years from the making thereof.”

This part of the statute deals with making of leases and in plainer words provides in substance that leases for a greater term than three years must be in writing. The other part of the statute which concerns us now continues “And moreover no leases, estates or interests either of freehold or terms of years or any uncertain interest of, in, to or out of any messuages, manors, lands, tenements or hereditaments shall at any time be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning, granting or

surrendering the same or their agents thereto lawfully authorized by writing or by act or operation of law."

This in brief means that no land or interest in land shall be assigned, granted or surrendered unless in writing signed by the party or his agent whose authority to do so must also be in writing. There are some exceptions to the general effect of the statute such as part performance of the contract, or possession given under an oral contract, but for the purposes of this book we will disregard the exceptions and consider the general rule to be unbending. The best interest of clients can only be served by reducing all such agreements concerning real estate to writing.

#### 44. What the Writing Must Contain: Form.

That statute requires no particular form (*Cadwallader v. App.*, 81 Pa. 194, but the memorandum should disclose (a) the interest of the parties, (b) the terms of the sale, (c) a definite enough description to identify the land, and (d) the consideration or the price to be paid. Any agreement which contains these essentials would be sufficient. The agreement need not be under seal (*Colt v. Selden*, 5 Watts 525). It has been held that a receipt on account of purchase price, if it contain these particulars, is sufficient (*Evans v. Evans*, 29 Pa. 277). The agreement need only be signed by the vendor, that is the man who agrees to sell land, although it is customary and better practice to have the vendee to sign also. Where the vendor is married, the husband or wife should sign also.

While it is true that no set form is required, it has become customary to use a form such as the following:—

**This Agreement**, made the 12th day of June, A. D. 1908, between Andrew Black, of the City of Philadelphia, State of Pennsylvania, and Charles Dolan, also of the City of Philadelphia, State of Pennsylvania. WITNESSETH, that the said party of the first part agrees to sell and convey to the party of the second part, and the party of the second part agrees to purchase all that certain lot or piece of ground with the messuage or tenement thereon erected, situate on the west side of "Y" Street, at the distance of 337 feet northward from the north side of "X" Street, in the Fiftieth Ward of the City of Philadelphia, containing in front or breadth on the said "Y" Street 18 feet and extending of that width in length or depth westward between two parallel lines at right angles with the said "X" Street 100 feet to

a three feet wide alley leading northward from "X" Street to "Z" Street—or (premises No. 1242 Y Street, Philadelphia, Pa.), on the terms and conditions following, to wit, the said party of the second part agrees to pay therefor the sum of sixty-five (\$6,500) hundred dollars as follows: Two hundred (\$200) dollars on the signing of this agreement (which deposit it is hereby agreed may, at the option of the said party of the first part, be retained by said party as liquidated damages in case of the default by the said party of the second part in the performance of the terms of this agreement) and the balance of the purchase money at the time of the settlement. All perpetual policies of fire insurance to be paid for at withdrawal value and term policy at proportionate value for unexpired term. The premises are to be conveyed free and clear of incumbrance. The gas fixtures, heaters, ranges, etc., annexed to the said building are included in the sale. Possession to be given at time of settlement. Taxes, water rent, rent and interest on incumbrance (if any) to be apportioned for the current term at the date of settlement. Gas bills, if any, to be paid by the seller. The title is to be good and marketable and such as will be insured by any title and trust company of Philadelphia. And the said parties hereby bind themselves, their heirs, executors and administrators, for the faithful performance of the above agreement within thirty days from the date hereof, said time to be the essence of this agreement, unless extended by mutual consent in writing endorsed hereon.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals that day and year first above written.

Sealed and delivered in the presence of

OSCAR THOMAS.

ANDREW BLACK. (Seal.)

WM. F. BELSTERLING.

CHARLES DOLAN. (Seal.)

\_\_\_\_\_. (Seal.)

—Received that day of the date of the within agreement the sum of \$200.00 on account of the purchase money named therein.

WITNESS.

WM. F. BELSTERLING.

ANDREW BLACK. (Seal.)

On the 12th day of June, A. D. 1908, before me the subscriber, William F. Belsterling, a notary public of the Commonwealth of Pennsylvania, residing in Philadelphia, came the within named

Andrew Black and Charles Dolan, and acknowledged the within agreement to be their act and deed and desired the same might be recorded as such.

WITNESS my hand and seal the day and year aforesaid.

WM. F. BELSTERLING,  
*Notary Public.*

Commission expires Feb. 14, 1910.

This agreement can, of course, be altered to suit the terms of the sale in question.

#### 45. Meaning of the Various Parts.

(a.) *The Introduction*, to wit:—

“Agreement made 12th day of September, A. D. 1911, between A. B., of the City of Philadelphia, State of Pennsylvania, of the first part, and C. D., also of said City and State, of the second part. Witnesseth that the said party of the first part agrees to sell and convey to the said party of the second part, and the said party of the second part agrees to purchase.”

This part of the agreement may be called the introduction, and its purpose is to recite the names, identify the parties and to state what the agreement is about.

(b.) *Description*.—Then follows the description, to wit:—

All that certain lot or piece of ground with the buildings and improvements thereon erected, known as No. 2214 Y Street, in the City and County of Philadelphia, State of Pennsylvania.

The description should be definite enough to identify the property. Within the city limits the words “property situate No. 2214 Y Street, in the City of Philadelphia, State of Pennsylvania,” is definite enough. Where there is no street and number then the description should be by metes and bounds and copied from the vendor's deed, *e. g.*, as follows:—

All that certain lot or piece of ground within the three-story brick message or tenement thereon erected, situate on the west side of “Y” Street, at the distance of 337 feet northward from the north side of “X” Street, in the Fiftieth Ward of the City of Philadelphia, containing in front or breadth on the said “Y” Street, 18 feet and extending of that width in length or depth westward between two parallel lines at right angles with said “X” Street one hundred feet to a three feet wide alley leading northward from “X” Street to “Z” Street.



(c.) *Terms and Conditions.*

The said party of the second part agrees to pay therefor the sum of sixty-five hundred (\$6,500) dollars as follows: Two hundred (\$200) dollars on the signing of this agreement [which deposit it is hereby agreed may, at the option of the said party of the first part, be retained by said party as liquidated damages in case the default by the said party of the second part in the performance of this agreement] and the balance of the purchase money at the time of settlement.

Under the law, if a vendee fails to make settlement the vendor has a choice of these remedies either to tender deed and sue for the whole purchase price (*Tupp v. Bishop*, 56 Pa. 424), or make a bona fide private or public resale and sue the vendee for the difference between the original purchase price and that of the re-sale (*Ashcom v. Smith*, 2 P. & W. 211). Sometimes, however, the vendor would prefer to do neither and would rather retain the deposit money and call the sale off, especially when he thinks he can sell it more advantageously later on. In such event he would only be entitled to retain from the deposit money his actual damages which are difficult to prove, for they only include actual expenses, such as preparing the agreement, etc. If such actual expenses do not equal the deposit money paid on account, the balance would have to be returned to the vendee (See *Lowenstein v. Armstrong*, 27 Pa. Superior Ct. 543). Where, however, there is such a clause as that set forth above, the law takes the view that the parties have agreed on the deposit money as being liquidated, *i. e.*, determined damages which the vendor suffers by reason of loss of his bargain. Such a clause therefor give the vendor three choices, to wit: Tender deed and sue for purchase price. Resell the property and sue for his loss, or call the sale off and keep the deposit money as his liquidated damages. The words "at the option of the said party of the first part," must not be omitted else the court might take the view that the parties had agreed on the forfeiture of the deposit money as the sole remedy in case of a breach (*Heckman's Estate*, 236 Pa. 193. But see *Cape May Co. v. Henderson* 231 Pa. 82).

The rest of this part of the agreement relates to the terms under which consideration should be paid. The methods of paying the consideration may be as many and varied as the parties may see fit to agree upon. For example, if desired to purchase subject to an existing mortgage it may be stated as follows:

The said party of the second part agrees to purchase said property under and subject to an existing first mortgage of \$4,000.00 now against the property and pay therefor the sum of \$2,500.00 as follows: \$200.00 at the time of the execution of this agreement and the balance at the time of settlement.

Again, the property may be clear of encumbrance and the vendor agree to take a first mortgage as part consideration, in which event the clause may read as follows:

The said party of the second part agrees to pay and the party of the first part agrees to accept therefor the sum of \$6,500 in the following manner: \$200 at the time of the signing of this agreement and the remainder as follows, by executing to the vendor a first mortgage to the amount of \$4,000 on said property and the balance of \$2,300 to be paid in cash at the time of settlement.

(d.) *Fire Insurance Policies.*

All perpetual policies of fire insurance to be paid for at the withdrawal value, and term policies at proportionate value for the unexpired term.

Fire insurance policies are generally of two kinds, perpetual and term. A perpetual policy is one which remains in force forever without payment of additional premium. It is issued on the payment of one premium based on a charge of 2 per cent. of the amount insured for. Thus the premium on \$1,500.00 policy would be \$30.00. This policy may be surrendered and cancelled at any time and the holder thereof receive a rebate or return of the whole premium paid less 10 per cent. This is what is known as the cancellation or withdrawal value.

A term policy is a policy which, as the name signifies, issued for a limited term such as one, three or five years. The premium varies according to the risk and the length of the term. The cancellation value of this kind of a policy is the proportion of the unexpired term less the brokers' commission assumed to be 15 per cent. of the premium. Very often, however, the vendor will throw the policy in without charge, especially if it be a term policy, in which event this clause should read:

All fire insurance policies now on said property included in the sale.

(e.) *Encumbrance Clause.*

"The premises are to be conveyed free and clear of all encumbrance."

This clause, unless qualified by exceptions, means that the vendor undertakes to pass an absolutely clear title. Any encumbrance, such as mortgage, judgment, building restrictions, would, unless paid off, be a noncompliance with this term. However, if the title is to be taken subject to the incumbrance, the clause will read as follows:

"The premises are to be conveyed clear of all encumbrance except a first mortgage of \$4,000 as above mentioned."

(f.) *Fixture Clause.*

"The gas fixtures, heaters, ranges, etc., annexed to said building are included in sale."

Fixtures are such articles as are annexed to freehold. In Pennsylvania the question whether a given article is a fixture or not depends not on the way it is fastened, but upon the intention of the person who attached it (*National Bank of Catasauqua v. North*, 160 Pa. 303; *McKay v. Meyer Co.*, 44 Pa. Superior Ct. 293). Thus gas fixtures, heaters, ranges, may or may not be fixtures according to the intention and it has already been held under certain circumstances that they are not (*Heysham v. Dettre*, 89 Pa. 506). Consequently it is good practice to always insert a clause to the effect that gas fixtures, heaters, ranges, etc., are included in sale. Indeed, it is best to specify all articles about which there may be a controversy as suggested hereafter (See par. 50, suggestion 5).

(g.) *Possession Clause.*

"Possession is to be given at the date of settlement."

The clause as herein set forth means that at the date of settlement the house will be vacant and possession given to the vendee. If there should be a tenant whose lease does not expire before the settlement a mere assignment of the lease would not satisfy this clause unless the vendee agrees to waive it. If it is desired to take the property subject to an existing lease, it is usually specified as follows:

"Possession to be given by lease."

(h.) *Apportionment of Taxes, Etc.*

Taxes, water rent, rent and interest on encumbrance (if any) to be apportioned for the current term at the date of settlement.

Unless this clause be inserted, taxes levied before settlement are an encumbrance and as such must be paid by the vendor (*Densmore v. Haggerty*, 59 Pa. 189; *King v. Association*, 106 Pa. 165).

This is the rule throughout the State, but is perhaps different in Philadelphia, where by local custom taxes, etc., are usually apportioned without special stipulation (*Moore v. Taylor*, 29 W. N. C. 495). Good practice, however, requires the insertion of the clause even in Philadelphia, and certainly outside of that city.

As the mode of apportioning taxes, water rent, rent, etc., will be discussed and explained fully hereinafter when we treat with the subject of settlements (See Chapter XIV, Part V, Settlements, par. 205), it will suffice now to say that under this clause, taxes and water rent and interest on mortgages, if any as well as rent (if the property is occupied by tenant) are apportioned to the date of settlement. That is, if the settlement takes place in June and the vendor has already paid his taxes for the whole year, it is, of course, plain that he is entitled to a rebate or a return of six months' taxes from the vendee. In Philadelphia it has become customary to apportion the rent also to the date of settlement (*Singer v. Solomon*, 56 Leg. Int. 315, 8 Pa. D. R. 402), although strictly speaking rent does not accrue day by day, but comes into existence the day on which it is due and belongs to holder of the legal title on the day it is due. It may be necessary outside of Philadelphia and it is good practice even in Philadelphia that it be provided in the agreement that the rent is to be apportioned, as above set forth.

(i.) *Kind of Title Agreed On, Etc.*

"The title is to be good and marketable and such as will be insured by any title and trust company of Philadelphia. And the said parties hereby bind themselves, their heirs, executors and administrators, for the faithful performance of the above agreement within thirty days from the date hereof, said time to be the essence of this agreement, unless extended by mutual consent in writing endorsed hereon."

As has been said heretofore (Section on Marketable Title, par. 9), in order to clear up any question that may arise respecting the title without maintaining an action of law, it is well to insert above clause, for by it a safe easy test is specified. Of course in sections of the State where there are no title companies the clause need only read, "The title is to be good and marketable, etc.," and the test then is as set forth hereinbefore in the paragraph on Marketable Title (Par. 9) that any title which exposes the holder thereof to the hazard of a law suit is not marketable.

As an agreement of sale is a contract, like any other contract

it would end on the death of a party, hence the necessity for that part of the clause which specifies that the parties bind themselves, their heirs, executors and administrators to the faithful performance of the agreement. This prevents death of either party from effecting the rights of the other.

**46. Execution of Agreement of Sale: Signature by Agent.**

An agreement of sale should be executed, that is, signed by both parties or agents. But when executed by an agent, the agent must be authorized in *writing* to do so, otherwise the agreement is not binding on his principal (*Parish v. Koons*, 1 Pars. 78), unless the principal subsequently in writing ratifies this act of the agent (*Darlington v. Darlington*, 160 Pa. 65). The delivery of the deed signed by the principal would be a ratification. This point is important and should be kept in mind by all real estate agents and brokers, that they cannot execute a binding agreement of sale nor a lease over three years unless they have authority in writing.

If the vendor is married, care should be taken to have the wife or husband sign, else she cannot be compelled to join in the deed. An agent acting for a married vendor must have his authority to execute an agreement of sale signed by both husband and wife.

**47. Acknowledgment of Agreements of Sale: Recording.**

It is not necessary for an agreement of sale to be acknowledged by the parties before a notary public and is rarely done, although it has this very important advantage which is overlooked by many real estate agents and brokers, to wit, when acknowledged it may be recorded. An agreement of sale may, under the recording acts, if properly acknowledged, be recorded. By recording an agreement constructive notice is given to the world of the agreement to sell and should the vendor thereafter refuse to carry out his agreement and deliver a deed, the vendee's agreement becomes a cloud on the title which prevents the vendor from selling to any one else; thus practically enabling the vendee to compel the vendor to keep his agreement, without commencing action at law. However an agreement executed by agent must be accompanied by a power of attorney showing the agent's authority to sign, otherwise it will not be accepted by the recorder of deeds for record.

**48. Legal Effect of Agreement of Sale.**

The moment an agreement of sale is signed it has the effect of

vesting in the vendee what is known as an equitable title to the land. That is the vendee has a right to go to a court of equity to enforce the terms if violated by the vendor. The vendor has in like manner an equitable title to the money. The vendee, however, may at his election enforce the transfer of the legal title to him or waive this right and sue for damages in a court of law.

#### 49. Extinction of Agreement.

(a.) *Merger*.—An agreement of sale may be extinguished first by deed being made and delivered by the vendor to the vendee in which event it is said to be merged into the deed. That is the deed supersedes or takes the place of the agreement of sale. The general rule is that the deed executed, delivered and accepted is taken to be the ultimate intent of the parties and prevails over inconsistent provision of a prior agreement. This rule has of course exceptions, but consideration of these are unnecessary for our consideration here.

(b.) *Cancellation or Rescission by Parties*.—If the parties to the agreement mutually agree that it be cancelled, abrogated or avoided this of course extinguishes the agreement of sale. The agreement to rescind the agreement of sale need not be in writing but for sake of safety and convenience of proof it is much better to have it done in writing (*McClure v. Jones*, 121 Pa. 550).

#### 50. Suggestions in Drawing Agreements of Sale.

The condition of the property purchased will of course suggest additional clauses which may be inserted for the better protection of either of the parties. The following are some suggestions as to points to observe in drawing agreements of sale:

1. If the property about to be purchased is not vacant, specify when and how possession is to be given.

2. If the vendee is to have possession before settlement have him sign a lease containing the usual ejectment clause (see form par. 248), for the period to the time of settlement. This will protect the vendor in case the settlement is not completed and the vendee refuses to move out. The ejectment clause in a lease provides a speedy method of ejecting a recalcitrant tenant and saves delay and expense of the ordinary proceeding at law.

3. See that the agreement provides that taxes, water rent and house rent are to be apportioned at the settlement. By local custom (*Moore v. Taylor*, 29 W. N. C. 495), in Philadelphia, this

is always done, but outside of Philadelphia not unless specified. Taxes levied and unpaid are really an incumbrance and must be removed by the grantor unless the agreement provides that they should be apportioned (*King v. Association*, 106 Pa. 165). Rent is held not to accrue day by day but to spring into existence the day it is due, hence, when a month's rent is paid in advance to the grantor he would be entitled to whole of it even if the settlement be the next day, unless the agreement provides that it is to be apportioned (*Singer v. Solomon*, 8 Pa. Dist. R. 402, but see *Johnson v. Smith*, 3 P. & W. 496).

4. It is well to provide also that municipal improvements or work done in or about the property by the city which might be a lien on the property, made between the date of the agreement of sale and settlement must be paid for by the vendee, otherwise the vendor might be forced to bear the expense. For this suggestion the author is indebted to a prominent member of the bar who related a circumstance in which a rather shrewd vendee after the purchase of a property filed a complaint through a third party with the city where premises in question were not under-drained, the city caused the work to be done and at the settlement the vendee maintained that the city claim was an encumbrance which the grantor was bound to remove.

5. Fixtures attached pass with the freehold. Not the manner of annexation but the intention determines the question whether a given chattel has or has not become a fixture (*National Bank of Catasauqua v. North*, 160 Pa. 303). It is a vexed question which can and should be avoided in the agreement of sale. Specify therefore in the agreement of sale that all gas fixtures, heater, range, &c., are included in the sale. Much litigation can be avoided by taking the little additional time required to enumerate what fixtures ornamental or otherwise are included.

6. When purchasing a property occupied by a tenant examine the property and determine what fixtures the tenant placed in the property and what he claims the right to remove (*McKay v. Meyer Co.*, 44 Pa. Superior Ct. 293). Do this especially where the premises about to be purchased is a store, for great liberality is shown the tenant in the matter of trade fixtures (*William's Landlord and Tenant*, 52 2d Ed.; *Lindsay v. Curtis*, 236 Pa. 229).

7. Sometimes where the unexpired term of a fire policy is of small value the vendor can be induced to throw it in the sale without charge.

## CHAPTER V.

### INSTRUMENTS OF CONVEYANCING. (Continued.)

#### DEEDS.

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Having executed the agreement of sale, the next step to bring about the transfer of title is the preparation and execution of a deed. The instrument known as deed is therefore our next consideration.

#### 51. What Is a Deed; Seal.

A deed, technically speaking, is any writing sealed and delivered by the parties (Michell on Real Estate and Conveyancing, 402). Because "deeds" are commonly used in conveying title to real estate, it is quite a popular error to suppose that a deed is



an instrument limited to that use only. The distinguishing feature about a deed is that the writing is under seal. It is therefore considered in law to be a solemn instrument. The seal imports solemnity. In the early days a wax seal was required and everyone had his own peculiar device or mark for a seal. Nowadays, the old time wax seal has been dispensed with and is no longer required. Any mark placed after the signature of a person intended to be a seal is so considered (Hacker's Appeal, 121 Pa. 192). Usually a seal is now represented by the word (seal) in brackets or the letters, (L. S.). In most legal documents it is printed at the end of the line. Anyone signing opposite the printed seal is presumed in law to have adopted the printed seal as his own (*Lorah v. Nissley*, 156 Pa. 329).

If therefore any instrument in writing under seal is a deed, it follows legally speaking that bonds, leases, mortgages, &c., which are usually under seal are deeds, and therefore to be exact, deeds to convey property should be termed *deeds of conveyance*. The word deed however has been so consistently used, not only by laymen, but even by the bar that it has come to have a fixed meaning in the minds of the public and we will therefore not hesitate to refer to a deed of conveyance simply as deed.

## 52. Kinds of Deeds. Deed Poll. Indenture.

That fountain head of legal definitions, Blackstone (2 Blk. page 296) very clearly explains the difference between a deed poll and an indenture. An indenture is the appropriate name of a deed to which there are two or more parties as distinguished from a deed poll which is made by one person. An indenture derives its name from the indentation which always appeared on a deed made between two or more parties. Formerly deeds between two parties were written as two copies or counterparts on the same sheet of paper or parchment signed by both grantor and grantee; between the two counterparts some words or letters of the alphabet were written. The copies were then separated by a wave like or indented line cut through these words or letters. Each party to the deed received one copy. In case of dispute arising as to the authenticity of either counterparts they could be fitted together and the question of genuineness definitely settled. From the indented cut came the name indenture and to this day every deed still begins with the words "This Indenture," although now only the grantor signs.

## 53. Analysis of a Deed. Form. \*

THIS INDENTURE, made the *Twelfth* day of *July* in the year of our Lord one thousand nine hundred and *eight* (1908) between *Andrew Black, Grocer of the City and County of Philadelphia, State of Pennsylvania*, (hereinafter called the grantor ), of the one part, and *Charles Dolan, Merchant, also of the said City and State*, (hereinafter called the grantee ), of the other part,

WITNESSETH, That the said grantor for and in consideration of the sum of *One (\$1.00) Dollar* lawful money of the United States of America, unto *him* well and truly paid by the said grantee at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, *hath* granted, bargained and sold, released and confirmed, and by these presents *doth* grant, bargain and sell, release and confirm unto the said grantee *his heirs and assigns*.

*All That Certain lot or piece of ground with the messuage or tenement thereon erected, Situate on the West Side of "Y" Street at the distance of three hundred and thirty-seven (337) feet Northward from the North side of "X" Street in the Fortieth Ward of the City of Philadelphia. Containing in front or breadth on the said "Y" Street, Eighteen feet and extending of that width in length or depth Westward between two parallel lines at right angles with the said "X" Street One hundred feet to a certain three feet wide alley extending Northward from "X" Street to "Z" Street.*

*Being the same premises which Edward France and Wife by Indenture bearing date the 5th day of July A. D. 1906 and recorded in the Office for the Recording of Deeds in and for the County of Philadelphia in Deed Book W. S. V. No. 1196, Page 213, &c., granted and conveyed unto the said Andrew Black in fee.*

*Under and Subject, nevertheless, to certain express conditions and restrictions as appear of Record in Deed Book W. M. G. 322, Page 34 &c.*

*Under and Subject also nevertheless, to the payment of a certain Mortgage Debt or Principal Sum of \$3,500.00 with interest thereon as the same may become due and payable.*

*Together with the free and common use, right, liberty and privilege of the aforesaid alley as and for a passage way and water course at all times, hereafter, forever.*

*And, TOGETHER will all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in*

\*This form of deed can be purchased already printed at any legal stationer. The words set out in italics must be filled in as shown above by the conveyancer in the blank spaces left in the printed form for that purpose.

any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of *him* the said grantor as well at law as in equity, of, in, and to the same.

TO HAVE AND TO HOLD the said lot or piece of ground above described *with the messuage or tenement thercon erected*, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said grantee *his heirs* and assigns, to and for the only proper use and behoof of the said grantee *his heirs* and assigns forever.

*Under and Subject, nevertheless, to the payment of a certain Mortgage Debt or Principal Sum of \$3,500.00 with interest as aforesaid.*

AND the said *Andrew Black*, Grantor, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said grantee *his heirs* and assigns, by these presents, that *he, the said Grantor* his heirs and assigns all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said grantee *his heirs* and assigns, against *him, the said Grantor, his heirs and assigns* and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under *him, them*, or any of them, shall and will *Under and Subject as Aforesaid*, Warrant and forever Defend.

IN WITNESS WHEREOF, the party of the first part has hereunto set *his* hand and seal Dated the day and year first above written.

Sealed and delivered in the presence of us:

*Wm. F. Belsterling,*  
*Daniel Long.*

} *Andrew Black.* (Seal.)

Received, on the day of the date of the above Indenture, of the above-named grantee *the sum of \$1.00 being the full consideration above mentioned.*

*Andrew Black.* (Seal.)

Witness:

*Daniel Long.*

On the *Twelfth* day of *July* Anno Domini 1908, before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared the above-named *Andrew Black* and in due form of law acknowledged the above Indenture to be *his* act and deed, and desired the same might be recorded as such.

WITNESS my hand and Notarial seal the day and year aforesaid.

William F. Belsterling,  
Notary Public.

*My commission expires January 12, 1911.*

RECORDED in the Office for Recording of Deeds in and for  
....., in Deed Book ....., No. ....,  
page ....., etc.

WITNESS my hand and seal of office this ..... day of  
....., Anno Domini 191..

There is much inserted in a deed which could easily be omitted and in fact most of the States including Pennsylvania have adopted by statute a short form of deed of which we will treat hereinafter (par. 57). But there is this to be said in favor of the old form; every clause and word has had years of legal interpretation and has acquired an exact known meaning to the profession. Furthermore short forms vary in different states, but the common law form of deed is universal. An examination of the following form of deed discloses that it may be divided into three principal parts:—

1. The *Premises* which extends from the beginning of the deed to the words, "To have and to hold."
2. The *Habendum Clause*, which extends from the words, "To have and to hold" to the words "In witness hereof."
3. The *Conclusion* which embraces the rest of the deed.

These three principal parts of deeds may be subdivided as follows:—

Premises includes	{ <div>           Date.            Names of parties.            Consideration.            Granting clause.            Description.            Recital.            Under and Subject Clause (?)            Appurtenance Clause.         </div>
Habendum includes	{ <div>           To have and to hold Clause.            Under and Subject Clause (?)            Covenants and Warranty.         </div>
Conclusion includes	{ <div>           Execution Clause.            Receipt.            Acknowledgment Clause.         </div>

**54. Meaning of Parts. Premises:**

(a.) *Date.* While the date should in all cases be inserted it is not essential to the validity of the deed. Anciently deeds were not dated. But a date inserted saves the party the trouble and expense of proving the actual date should the question ever arise. A date inserted in the deed, however, is not proof absolute that the deed was executed on that date. The date can be contradicted, but it is, of course, *prima facie* evidence of the time of the deed's execution (*Finney's Appeal*, 59 Pa. 398; *Park v. Neely*, 90 Pa. 52; *Cutter v. Pierson*, 26 Superior Ct. 13).

(b.) *Names of Parties.*—Following the date comes the names of the parties, their professions and city in which they live. Care should be taken to insert the correct names of the parties and if they have middle initials insert them. In this way may be avoided the possible expense of correcting the deed or establishing identity. It is good practice to insert the profession following the names. It is to be regretted that this old custom has lately fallen in disuse. It had many advantages, chief among them being its aid in fixing the identity of the individual against whom a title search was being made. *E. g.*: John Smith, Blacksmith, distinguished him from the hosts of other John Smiths appearing of record, in a way that would leave no doubt on the mind of the person making the title search that he was the one sought. Of like advantage is the adding the name of the city and state in which the grantor or grantee resides, and this is usually done.

(c.) *Consideration.*

That the said grantor, Andrew Black, for and in consideration of one (\$1.00) dollar lawful money of the United States unto him well and truly paid by the said grantee at or before the sealing or delivery hereof, the receipt whereof is hereby acknowledged.

At common law a bargain and sale conveyance (such as the form herein set forth), required an expressed consideration to make it valid. The amount of the consideration was of no moment so long as it was expressed, hence arose the custom of inserting one dollar as a consideration, a form which has persisted to the present day. The considerations expressed in modern deeds are not conclusive and may be contradicted and the real consideration proved (*Alexander v. Bush*, 46 Pa. 62). Hence, considerations expressed are frequently fictitious and

what is known as a nominal consideration, that is "one dollar," is most usually inserted, it having the additional advantage of keeping from the public the real amount paid for the property conveyed.

(d.) *Granting Clause.*

"Hath granted, bargained and sold, released and confirmed and by these presents doth grant, bargain and sell, release and confirm unto the said grantee his heirs and assigns."

These words are sometimes called the "operative words" and in the printed form of deeds, usually precede the description, but may be inserted anywhere. While these words are always printed in the deed the strict necessity of these words is no longer required, they may be dispensed with, provided words indicating an intention to convey are used (*Auman v. Auman*, 21 Pa. 343). In Pennsylvania the Act of 1909 (see *infra*, par. 58, Act of April 1, 1909, P. L. 91) provides that the words grant and convey, or either one of them, shall import, grant, bargain and sell, release and confirm, etc.

*Word "Heirs" Important.*—The last three words, "his heirs and assigns" are known as words of limitation because they limit or denote the quantity of the estate intended to be conveyed. To pass a fee simple estate the word heirs is essential, and at common law without the addition of such word the grantee took but a life estate (*Brown v. Mattocks*, 103 Pa. 16). These words when not printed in the deed must be added by the conveyancer. If the grantee is an individual the apt words are "his heirs and assigns." If a corporation the apt words are its successors and assigns. The word assigns, while usually added, is superlative. The word *heirs* is the important word. The word heirs ought, therefore, as a matter of good practice be always inserted, although since the Act of 1909 (Par. 58, *infra*) it may no longer be necessary. But even before this act there were five instances as set forth by Fallon (*Conveyancing in Pennsylvania*, Fallon, 155) in which the word heirs might be dispensed with.

(1.) In executory contracts or agreements for the sale of land, inasmuch as they are regarded as conveyances in equity, which will permit the passing of a fee upon payment of the consideration, without words of inheritance.

(2.) A conveyance to a corporation does not require the words "successors and assigns," as it is supposed to have perpetual existence.\*

(3.) A fee simple may be created by reference to another instrument in which the necessary words are used, by an indorsement granting "all right, title and interest in the within deed," indicating an intention to pass a fee.

(4.) A sale by an officer of the law under an order of court may operate to pass an estate in fee without the use of the word "heirs." This is especially so in the case of a sheriff's sale.

(5.) A conveyance to a trustee which requires the vesting of a fee in the trustee in order to carry out the trust does not require words of inheritance.

(e.) *Description.*

All that certain lot or piece of ground with the mesuage or tenement thereon erected, situate on the west side of Y Street at the distance of three hundred and thirty-seven (337') feet northward from the north side of X Street in the Fiftieth Ward of the City of Philadelphia, containing in front or breadth on said Y Street eighteen (18') feet and extending of that width in length or depth westward between two parallel lines at right angles with said X Street one hundred (100') feet to a certain three feet wide alley extending north from X Street to Z Street.

This part of the deed is called the description and is, of course, to be inserted into the deed by the conveyancer. The object of the description in a deed is to identify the land to be conveyed, and no deed will be operative which does not contain a description sufficient for such identification (*Negley v. Lindsay*, 67 Pa. 225). The description, while it must be clear, need not necessarily be technically accurate, but must be sufficiently precise to enable the surveyor to locate it. Should the deed contain a reference to some other paper which describes the property it will be sufficient (*Armstrong v. Boyd*, 3 P. & W. 458). For this reason the recital is always placed in a deed. The reference therein to the prior deed insures against any possible mistake in the description.

\*Although not all corporations are perpetual, some corporations are limited to a term of years, *e. g.*, state banking corporations. Better use the words successors and assigns, even though superlative.

(f.) *The Recital.*

Being the same premises which Edward Frame and wife by indenture bearing date the fifth day of July, A. D. 1910, and recorded in the office for the recording of deeds in and for the City and County of Philadelphia in Deed Book W. S. V. 1196, page 213, etc., granted and conveyed unto Andrew Black in fee.

This clause, known as the recital, is not a necessary part of the deed, although it is of value in indicating the source of the title and in fixing the description of land. It ought, therefore, always be inserted in the deed. Its usual place is immediately following the description. Anything recited in the recital as intended to be done is treated in law thereafter as being done (Penn. v. Preston, 2 Rawle 14; Waslee v. Rosmann, 231 Pa. 219). Where the recital and operative part of the deed conflict the operative part prevails if certain and definite. If indefinite the recital may be used to explain it.

(g.) *Encumbrance Clause. Under and Subject.*

Under and subject nevertheless to the payment of a certain mortgage debt or principal sum of thirty-five hundred (\$3,500.00) dollars with interest thereon as the same may become due and payable.

This under and subject clause may be placed either in the premises immediately following the recital or in the habendum immediately after the to have and hold clause. In the deed form set forth on page 64 we have placed it in the premises and referred to it again in the habendum, which is quite a common method. Before the Act of June 12, 1878 (P. L. 205), in Pennsylvania the under and subject clause as above, made the grantee personally liable to both the grantor and mortgagee or holder of the mortgage for any balance which might remain due if on foreclosure the land failed to bring the principal of the mortgage. This is on the theory that the under and subject clause operated as an implied covenant on the part of the grantee to assume the payment of the mortgage debt. Since the act, however, the grantee is not personally liable to the mortgagee for the payment of the mortgage principal unless "he shall by agreement in writing have expressly assumed a personal liability therefor or there shall be express words in the deed of conveyance stating that the grant is made on condition of the grantee assuming personal liability: Provided that the use of the words under and subject to the payment of such ground rent, mortgage or other



encumbrance shall not alone be construed as to make such grantee personally liable as aforesaid."

It was the general impression of the real estate lawyers until the decision of *May's Estate* (218 Pa. 64) that this Act of June 12, 1878, absolved the grantee from all personal liability as to *both* grantor and mortgagee, so that in the event of a foreclosure the grantee's liability was limited to the value of the land. *May's Estate* (218 Pa. 64) holds otherwise and decides in substance that the Act of 1878 merely bars the mortgagee or subsequent holder of the mortgage from proceeding directly against the grantee, but that "the grantee is liable to the grantor if the grantor is compelled to make good to the mortgagee the difference between what the land brings and the value of the mortgage." The effect of the decision is to permit the mortgagee to accomplish indirectly what he cannot do directly,\* that is fasten ultimate liability upon the grantee by suing the grantor who in turn can sue the grantee and recover from the grantee what he, the grantor, was compelled to pay the mortgagee. The situation is unfortunate and an act of the legislature is sorely needed to absolve the grantee from personal liability on the encumbrance. Until such act is passed the only method by which a grantee can avoid personal responsibility is to insist on a release of this liability from a grantor when taking title.

Of course, should there be no mortgage to take under and subject to the clause is omitted unless there be certain building restrictions, in which case the clause would read:

"Under and subject nevertheless to certain express conditions and restrictions as appear of record in Deed Book W. M. G. 322, page 34, etc."

This is the usual method of drawing this clause, although the far better practice is to actually recite the restrictions if not too bulky, *e. g.*:

"Under and subject nevertheless to the express conditions and restrictions that said premises shall not, within the period of five years from the date hereof be sold to or occupied by any person other than of Caucasian race, and that, within said period the said premises shall not be used as an undertaking establishment, nor for the manufacture, bottling or sale of malt, vinous

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\**Smith v. Danielson*, 45 Pa. Superior Ct. 136, holds, the mortgagee cannot even maintain the action in the name of the mortgagor to his (mortgagee) use.

or spirituous liquors nor for the carrying on of any business requiring the use of machinery run otherwise than by human power, and that the porches upon said structure erected on the said lot shall be maintained free of any enclosure or obstruction which might prevent the free and common enjoyment of air, light and view by all of the owners, tenants and occupiers of structures upon any of the lots which may front on the said Y Street between X Street and Z Street.

(h.) *Appurtenance Clause. End of Premises.*

"Together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto the hereby granted premises belonging, or, in anywise appertaining and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said grantor, as well at law as in equity of, in and to the same."

As a matter of law, all easements, rights and incidents which belong to the property conveyed and are necessary to its full enjoyment, pass as appurtenances without mention of them in the deed (*Murphy v. Campbell*, 4 Pa. 480; *Casey v. Canning*, 43 Superior 31). But only those things that are necessary to the enjoyment of the land conveyed pass without mention; things that are merely convenient do not (*Messer v. Rhodes*, 3 Brewst. 180). Thus, *e. g.*, alley-ways, water-courses, light and air are usually merely convenient and thence would not pass as an appurtenance. For this reason the appurtenance clause which is so broadly drawn as to cover every conceivable right, usually always appears in the printed form of deeds. The legal maxim "that what is appurtenant to a piece of land is appurtenant to every part thereof" is well to be remembered, for if a right of way be granted as appurtenance to a tract of land, later if that tract be divided into smaller lots, each of the grantees of the subdivisions will be entitled to the same right of way (*Ermentrout v. Stitzel*, 170 Pa. 540), which may have been intended only for the convenience of the single owner of the undivided tract.

**55. Meaning of Various Parts of Deed Continued. Habendum Part.**

(a.) *To Have and To Hold Clause.*

"To have and to hold the said lots or pieces of ground above described with the messuage or tenement thereon erected; hereditaments and premises hereby granted or mentioned and intended so to be, with the appurte-

nances, unto said grantee, his heirs and assigns, to and for the only proper use and behoof of the said grantee, his heirs and assigns forever.

The purpose of this clause is to determine what estate passes. In the clause above set forth it provides that the grantee shall have and hold an estate in fee. The habendum and tenendum clause may be used to explain the premises of the deed and perhaps qualify it (*Bedford Lodge v. Lentz*, 194 Pa. 399). But if it be repugnant or hopelessly contradictory to the premises, it will be rejected (*Karcher v. Hoy*, 151 Pa. 391). The office of the habendum and tenendum may be and sometimes is performed in the premises in which case the habendum is not really necessary; however, it usually appears as a printed part in all forms of deeds.

(b.) *Covenants of Warranty.*

"And the said grantor, Andrew Black, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said grantee, his heirs and assigns, by these presents that he the said grantor, Andrew Black, and his heirs, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be with appurtenances unto the said grantee, his heirs and assigns, against him the said grantor, Andrew Black, and his heirs and against all and every person and persons whosoever lawfully claim or to claim the same or any part thereof by, from or under him, them or any of them shall and will under and subject as aforesaid warrant and forever defend."

This clause is the covenant of warranty. A covenant is any writing under seal wherein either party may stipulate the truth of certain facts or may bind himself to perform or give something to the other (*Mitchell on Real Estate Conveyancing* 437). The most usual covenant found in a deed is the covenant of warranty. It had its origin, as Mr. Fallon (*Pa. Law of Conveyance* 190) points out, in the fact that in the early history of England, conveyances were chiefly made from a superior to an inferior as from a baron to his retainer or from father to daughter upon her marriage. No examination of the grantor's title was deemed necessary for the grantee relied solely upon his grantor's covenant of warrant or promise to defend his (the grantee's) title. In modern conveyancing the ancient warranty or guarantee has lost its importance because owing to our recording system a purchaser is in the position to examine the

title of the land purchased and to ascertain its validity (*Whitehead v. Carr*, 5 Watts 369). Of the five ancient covenants formerly appearing in old-time deeds in Pennsylvania only the covenant of warranty has survived and is the only one necessary to treat of here. The covenants of warranty are of two kinds: Special and General.

(c.) *Meaning of Special and General Warranty.*—*Special warranty* is such as is set forth above and is the one most generally used. It is a promise or covenant on the part of the grantor to defend the grantee against all actions, for the land conveyed which may be brought by the grantor or his heirs, assigns or anyone claiming under the grantor. A *general warranty*, however, is a covenant on the part of the grantor to defend the grantee's title against all mankind, the whole world. This, of course, is an unusual covenant and so harsh in its terms that it is never presumed to have been intended unless expressly stipulated for. It amounts practically to an insurance of title. A purchaser has no right to expect a general warranty in his deed unless he expressly bargains for it (*Whitehead v. Carr*, 5 Watts 368), and it has been held that the words, in an agreement of sale that the words "vendor will well and sufficiently grant, convey and assure the said tract of land to the vendee, his heirs and assigns," entitled the vendee to only a special warranty (*Lloyd v. Farrel*, 48 Pa. 78). A general warranty would be created by the following words:—

And the said grantor, Andrew Black, for himself, his heirs, executors and administrators doth covenant, promise and agree to and with the said grantee, his heirs and assigns, by these presents that he the said grantor, Andrew Black, *will forever warrant and defend the said property and every part thereof unto the grantee, his heirs, executors and administrators against the lawful claims and demands of all persons whomsoever.*

By the Act of 1909 (Act of April 1, 1909, P. L. 91, secs. 5, 6), providing for a short form of deed, the words "the grantor will warrant generally" shall have the effect and mean the same as the general warranty above set forth, and the words, the grantor will warrant specially shall have the same meaning and effect as the words set forth in the special warranty on page 73. This act will be considered more fully later (Par. 58).

**56. Meaning of Parts (Concluded). Conclusion of Deed.***(a.) Execution Clause or Testimonium.*

In witness whereof the parties have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

Sealed and delivered in the  
presence of us:

\_\_\_\_\_ (Seal.)  
\_\_\_\_\_ (Seal.)

It will be observed that the Indenture Deed from which the above clause is an extract retains the word interchangeably from the old form of indenture when it was customary for the grantee to sign. This the grantee no longer does, although the form persists. A deed poll omits, of course, the word interchangeably and is dated at the end instead of at the top. (See form par. 236.)

*(b.) Receipt.*—Following the testimonium or execution clause is usually found a receipt in the following form:—

“Received on the day of date of the above indenture of the above-named grantee the full consideration money hereinbefore mentioned.”

This is signed by the grantor also, although it is of no value where the consideration is only nominal.

*(c.) Acknowledgment Clause* (See Act of April 1, 1909, sec. 8, P. L. 93).

“On the 7th day of July, Anno Domini one thousand nine hundred and eleven (1911) before me the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared the above named B. M., and in due form of law acknowledged the above indenture to be his act and deed and desired the same might be recorded as such.

“Witness my hand and notarial seal the day and year aforesaid.”

\_\_\_\_\_  
*Notary Public.*

This is to be signed by the notary public or officer authorized by law to take acknowledgments. Execution of acknowledgments and execution of deeds will be considered more in detail in the later (Section III and IV).

## SECTION II. SHORT FORM OF DEED.

**57. Short Form of Deed Under Act of April 1, 1909.**

The reader by this time has probably reached the conclusion that there is much in the form of deed just examined and analyzed that could without loss be omitted. And it is doubtless true that much of the verbiage could be eliminated for it is merely a survival of the times when the scrivener or the conveyancer was paid by the number of words written; when mere prolixity had its own reward. It is not to be wondered, therefore, that many jurisdictions have by legislation provided for a short form of deed. In Pennsylvania also by the Act of April 1, 1909 (P. L. 91), was adopted a short form of deed. The title insurance companies and the older conveyancers are, however, loath to abandon the old form and to adopt the new. There is much to be said on both sides. In favor of the short form the best argument probably is that it facilitates the recording and saves time and expense. On the other hand, the adherents of the older form point out that this older form has received years of judicial interpretation and every clause has a known definite meaning, not only in this jurisdiction but in most all common law jurisdiction. Which form will finally prevail cannot now be determined, whether art will yield to commercialism or whether the simplified form will meet the fate of simplified spelling is a question beyond us. We will set forth the short form and leave the question of its use to the individual tastes of conveyancers.

## ACT OF APRIL 1, 1909. FORM.

The form of deed provided for by the Act of April 1, 1909, is as follows:

## THIS DEED

Made the seventh day of July, in the year nineteen hundred and eleven (1911) between A. B., Blacksmith, and C. D., Grocer, both of the City and County of Philadelphia, State of Pennsylvania.

WITNESSETH. That in consideration of *one (\$1.00) dollar* in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantee *all that certain lot or piece of ground with the messuage or tenement thereon erected, situate on the west side of "Y" Street at the distance of 337 feet northward from the north side of "X" Street,*

*in the Fortieth Ward of the City of Philadelphia, containing in front or breadth on the said "Y" Street 18 feet and extending of that width in length or depth westward between two parallel lines at right angles with the said "X" Street 100 feet to a three feet wide alley leading northward from "X" Street to "Z" Street.*

And the said grantor does hereby covenant and agree that he will warrant *specialty* the property hereby conveyed.

IN WITNESS WHEREOF the said grantor has hereunto set his hand and seal the day and year first above written.

*Andrew Black.* (Seal.)

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA. } ss:

On the *seventh day of July, A. D. 1911*, before me, *John Smith*, came the above named *Andrew Black* and acknowledged the foregoing deed to be his act and deed and desired the same to be recorded as such.

WITNESS my hand and *notarial* seal the day and year aforesaid.

*John Smith.* (Seal.)

*Notary Public.*

*My commission expires Feb. 13, 1916.*

#### 58. Provisions of Act of April 1, 1909 (P. L. 91).

The first section of this act provides:

SECTION 1. *Be it enacted, etc.,* That from and after the approval of this act, in any deed hereafter executed, unless expressly limited to a lesser estate, the words "grant and convey," or either one of said words, shall be effective to pass to the grantee or grantees named therein a fee simple title to the premises conveyed, if the grantor or grantors possessed such a title, although there be no words of inheritance or of perpetuity in the deed.

This simply means that unless a lesser estate is expressly specified in the deed, the words grant and convey shall operate to pass a fee simple title, without the word "heirs" (See Par. 54-D).

Section 2 provides:—

SECTION 2. All deeds hereafter executed, granting or conveying lands, unless an exception or reservation be made therein, shall be construed to include all the estate, right, title, interest, property, claim, and demand whatsoever, of the grantor or grantors, in law, equity, or otherwise howsoever, of, in, and to the same, and every part thereof, together with all and singular the improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

This means that all appurtenances and every part of the land conveyed passes with specific mention thereof. And any part or appurtenance not intended to pass must be expressly excepted.

SECTION 3. That the words "grant and convey," or either one of said words, in any deed hereafter executed, shall be adjudged an express covenant to the grantee, his heirs and assigns; to wit, That the grantor was seised of an indefeasible estate in fee simple in the property conveyed, free from incumbrances done or suffered from the grantor, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed.

This means the words "grant and convey" are to be taken to imply a covenant of fee simple title and for quiet enjoyment, unless expressly limited otherwise.

SECTION 4. That a covenant by the grantor or grantors, in any deed, that he, they, or it "will warrant generally the property hereby conveyed," shall have the same effect as if the grantor or grantors had covenanted that he or they, his or their heirs and personal representatives or successors, will forever warrant and defend the said property, and every part thereof, unto the grantee, his heirs, personal representatives and assigns, against the lawful claims and demands of all persons whomsoever.

This is self-explanatory.

SECTION 5. That a covenant by the grantor or grantors in any deed, that he, they or it "will warrant specially the property hereby conveyed" shall have the same effect as if the grantor or grantors had covenanted that he or they, his or their heirs and personal representatives or successors, will forever warrant and defend the said property, and every part thereof, unto the said grantee, his heirs, personal representatives and assigns, against the lawful claims and demands of the grantor or grantors, and all persons claiming or to claim by, through, or under him or them.

This is also self-explanatory.

SECTION 6. That whenever in, any deed, there shall be used the words "release and quitclaim," such deed shall be construed as if it set forth that the grantor or grantors hath or have remised, released, and quitclaimed, and by these presents doth or do remise, release, and forever quitclaim, unto the grantee, his heirs and assigns, all right, title, interest, property, claim, and demand



whatsoever, both in law and in equity, in or to the lands or premises released, or intended so to be, so that neither the grantor or grantors, nor his or their personal representatives, his or their heirs or assigns, shall, at any time thereafter, have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever.

This section means that where it is desired to release any claim to land by what is commonly called a quitclaim deed (See form, par. 242), the words release and quitclaim are to be substituted for the words grant and convey and shall have the same meaning as the old lengthy form of hath remised, released and forever quitclaimed, etc. (see form, par. 243).

### SECTION III.

#### EXECUTION OF DEEDS. DELIVERY.

##### 59. Meaning of Term Execution.

By execution of a deed we mean signing and sealing. A deed is considered to be a solemn instrument and it is presumed in law that before a party has put his hand to it he has made himself familiar with its contents, either by reading it carefully himself or if he cannot read by causing it to be read to him. As a Chief Justice of the Supreme Court of Pennsylvania said, "If a party who can read will not read a deed put before him for execution, or if, being unable to read, he will not demand to have it read or explained to him, he is guilty of supine negligence, which, I take it, is not the subject of protection either in law or equity" (Greenfield's Estate, 14 Pa. 496). It does not follow, however, that once a deed is signed, the injured or deceived party has no redress against a fraud, misrepresentation or mistake. The court will relieve in a proper case provided it is shown that the suitor exercised reasonable care and diligence. Safe practice requires in all cases that a party read over the instrument that he signs and a careful conveyancer will always, where the party is illiterate, read over and explain the instrument to him before execution. To completely execute a deed so as to pass title, it must be signed and sealed, attested and delivered.

##### 60. Signing.

Historically sealing antedates signing. In the early times the English people generally, noble as well as peasant, could not

write, hence at common law the affixing of the seal only was necessary to the execution of the deed. The Statute of Frauds, however, it will be remembered, required that instruments concerning real estate be *signed*. From this time on, the signing became the important part of the execution of a deed. Sealing by itself is no longer sufficient, the *deed must be signed*.

A deed is good if actually signed no matter how poorly the signature be written. If the party is unable to write he may sign by mark, in which event the mark must be attested, *i. e.*, witnessed by the one who writes the party's name. This is usually done as follows:—

Witness:

Jeremiah Stone.

his

Jacob X Strong  
mark.

The name of the grantor is written out by the witness and the grantor then makes his mark between his Christian and surname. The words, his and mark are then written respectively above and below the mark and the witness signs opposite.

#### 61. Sealing.

As the world outgrew the necessities of the age when men made seals because they could not write, seals became less elaborate and in some states have been abolished altogether. In Pennsylvania it is still necessary; a deed still requires a seal. Although a writing might operate to convey land without sealing, yet strictly speaking it would not be a deed. However, in Pennsylvania, neither the wafer or wax seal is required, nor is any distinctive seal required; any mark made opposite the name and intended as a seal will be so considered (Hacker's Appeal, 121 Pa. 192).

A deed of a corporation must always be under seal, but even the seal of a corporation need not necessarily be of any prescribed form. Any device adopted by the corporation and intended as its seal will be so treated (Nicholas v. Machine Co., 7 North 137).

#### 62. Attestation.

Attestation means witnessing. The witnessing of the execution of a deed by subscribing witness or witnesses was not necessary at common law and is not required in Pennsylvania gen-

erally speaking, though it is usually done so that in case of any dispute thereafter it may be known who was present, in order that their testimony may be procured (*Long v. Ramsey*, 1 S. & R. 72). There is, however, an important exception to the rule just stated, and that is, "*two subscribing witnesses*" are required where conveyance is made to a church or other charitable institution or use (Sec. 11, Act April 26, 1855, P. L. 328). It is good practice, therefore, to have subscribing witnesses in all cases; so all exceptions will be provided against. Some states require subscribing witnesses and whenever a deed be made conveying land outside of Pennsylvania it is safe practice to have the execution attested by two subscribing witnesses.

### 63. Delivery of Deed.

After signing and sealing of deed but one thing remains to be done in order to vest title in the grantee, that is, the deed must be delivered. A deed signed and sealed or even acknowledged does not take effect until delivered. No ceremony or form whatever is necessary to a valid delivery. It is a question of intention (*Critchfield v. Critchfield*, 24 Pa. 100). It is plain that if the grantor prepares a deed, signs and seals it and puts it in his desk for safe keeping until settlement and it is stolen by the grantee, this is not a delivery and the deed will be of no effect (*Sears v. Scranton Trust Co.*, 228 Pa. 126). Transfer of possession of the deed is delivery and delivery will often be presumed from the facts. Thus possession of deed by grantee raises a presumption in absence of evidence to the contrary that the deed was properly delivered (*Clauer v. Clauer*, 22 Superior Court 395). And the general rule is well settled that where a deed appears to be signed, sealed, delivered, acknowledged and recorded a purchaser has a right to act on the faith that this was all done as it purports to be in proper form by the proper parties.

### 64. Delivery in Escrow.

Delivery is not always absolute, it may be in escrow. That is where a deed is delivered to a third person as an escrow to take effect upon the performance of some conditions on the part of the grantee. As for example, where a grantor delivers a deed to a real estate broker with instructions to deliver it to the grantee when the grantee pays the purchase price. Here the delivery, as far as the grantor is concerned, is complete, yet the

deed does not take effect until the grantee complies with the conditions. If the agent with whom the deed is left as an escrow delivers it to the grantee without the performance of the conditions, the title of the grantee is voidable, that is it can be avoided if action be taken before a bona fide purchaser buys from the grantee without notice (*Blight v. Schenk*, 10 Pa. 285). A delivery in escrow can only be made through a third party. Delivery direct to grantee to be held in escrow until conditions are performed will not operate as an escrow, and the law regards the delivery as absolute (*Gish v. Brown*, 171 Pa. 479).

**65. Destruction of Deed Does Not Revest the Property.**

Once a deed is delivered title passes to the grantee and can only be gotten back into the grantor by a new deed of conveyance. Mere destruction of the deed does not revest the title in the grantor (*Coleman v. Reynolds*, 181 Pa. 317).

SECTION IV.

ACKNOWLEDGMENT AND PROBATE OF DEEDS.

**66. Necessity for and Meaning of Acknowledgment.**

We have seen that signing, sealing and delivery of deed without more vests the title in the grantee. Acknowledgment is not necessary to pass the title, but acknowledgment is necessary in order to record the instrument. This practically makes acknowledgment necessary in every case, for without it there is no protection against the frauds which the recording system has done away with.

By acknowledgment is meant the appearance of the grantor before an officer qualified by law to take acknowledgments (usually a notary), and formally acknowledging the execution of the instrument as his act and deed.

**67. How Made.**

The acknowledgment must be made by the grantor in person and the official taking the acknowledgment while he need not be personally acquainted with the grantor should be satisfied as to his identity (*Comm. v. Haines*, 97 Pa. 228).

*Acknowledgment by a corporation* is made by one of the officers authorized to do so, either by the president or the secre-

tary. The best practice is to have the acknowledging clause recite the fact that the officer was authorized to do so by resolution of the board of directors. The secretary should attest as witness even where he is the officer making the acknowledgment. (See form of acknowledgment by corporation, par. 211).

"A corporation may acknowledge any deed, conveyance, mortgage or other instrument of writing by an attorney appointed by such corporation, and such appointment may be embodied in said deed, conveyance, mortgage or other instrument of writing in substantially the following form (Act of May 11, 1901, Sec. 1. P. L. 171)."

"The (name of corporation) doth hereby constitute and appoint (name of appointee) to be its attorney for it, and in its name and as and for its corporate act and deed to acknowledge this (name of instrument), before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent and purpose that the same may be duly recorded."

Section 2 of the same act also provides that "such acknowledgment may be made before any person or officer now or hereafter to be authorized by the laws of this Commonwealth to take acknowledgments of deeds or other instruments of writing, whose certificate of such acknowledgment shall be in substantially the following form:

I hereby certify that on this ..... day of ....., in the year of our Lord ..... and ....., before me the subscriber (title of officer taking acknowledgment), personally appeared (name of attorney), the attorney named in the foregoing (name of instrument), and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said (name of instrument) to be the act of the said (corporation's name).

Witness my hand and ..... seal the day and year aforesaid.

..... (Seal.)

*Acknowledgments by trustees* are made the same as by individual except that the clause should recite that he is a trustee. Although the word trustee annexed to his name has been held sufficient without more (*Dail v. Moore*, 51 Mo. 589) (See form, par. 209).

*Acknowledgments by attorneys in fact* should be as the act of their principal as well as their own act (See form, par. 210).

**68. Separate Acknowledgments of Married Women Not Necessary in Pennsylvania.**

In some of the states, for example New Jersey, it is still necessary for an acknowledgment of the wife to be separate and apart from her husband, but in Pennsylvania, by the Act of April 4, 1901 (P. L. 67), this is no longer required, and the acknowledgment of a married woman may now be taken as though she were a feme sole, that is, like that of any other person.

**69. What a Valid Certificate of Acknowledgment Must Contain.**

It has been the policy of the State of Pennsylvania to prevent any injustice from arising from any defects that may happen in the certificate of acknowledgment. Hence at every session of the legislature, which assembles biennially, there is usually passed an act which validates all acknowledgments taken before its passage, which may be invalid by reason of omission or defects of form. However, by bearing in mind the few essentials that are requisite to a proper acknowledgment there should be no fear of any defective acknowledgments.

The certificate of acknowledgment to be valid should always contain these things:—

- a. The date.
- b. The venue.
- c. The name of the grantor.
- d. The signature of the officer taking the acknowledgment.
- e. His official position.
- f. His seal.
- g. If a notary, the date of the expiration of his commission.

(See following form.)

STATE OF PENNSYLVANIA,      }  
COUNTY OF PHILADELPHIA,   } ss:

On the seventh day of July, Anno Domini 1911, before me the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the City and County of Philadelphia, personally appeared the above named A. B. and in due form of law acknowledged the above indenture to be his act and deed and desired the same might be recorded as such.

Witness my hand and seal the day and year aforesaid.

JOHN SMITH, (Seal.)  
Notary Public.

Commission expires June 11, 1913.

Since the Act of April 1, 1909, P. L. 93, the venue may possibly be omitted and the form of acknowledgment set forth at the end of short form of deed, page 75, may be used for all purposes.

*a. Date.*—The date should appear. By this is meant the date when the deed is acknowledged, not when executed, although the best practice is to have the deed acknowledged as soon as it has been executed. The acknowledgment may be made at any time after execution, but the deed cannot be recorded until it is acknowledged.

*b. Venue.*—By venue is meant the place of residence of the officer taking the acknowledgment. In the form above given it appears in the words, A notary public of the Commonwealth of Pennsylvania *residing* in the City and County of Philadelphia. Should the officer be a magistrate or justice of the peace, the venue would read: A magistrate (or justice of the peace) of the County of Philadelphia, etc.

*c.* The name of the grantor who makes the acknowledgment must, of course, appear.

*d.* Signature of the officer taking the acknowledgment is obviously necessary to the validity of the certification.

*e.* Official position of the officer taking the acknowledgment must appear in order that the authority of the officer to take acknowledgment may appear on the face of the certificate.

*f. Seal.*—The seal completes the act of certification and should appear after the signature.

*g.* Notary publics are required in addition to append the date when their commission expires under Act of April 4, 1901 (P. L. 70.)

In view of the Act of March 24, 1903, P. L. 50, which prohibits a director, officer, or stockholder of any bank, banking institution or trust company from performing duties of notary in his company, an acknowledgment or affidavit taken for any bank, banking institution or trust company should contain a certification by the notary in words such as following: "I am not a stockholder, director or officer of said company."

#### **70. By Whom Acknowledgments May Be Taken.**

Certain officials are usually designated in each of the states as being empowered to take oaths and acknowledgments. Mr. Fallon (See Fallon's Pa. Law of Conveyancing 265) has collected and classified all the officials empowered to take oaths and

acknowledgments in Pennsylvania, which he has set forth as follows:

"Ambassadors, ministers plenipotentiary, chargés d'affaires, or other persons exercising public ministerial functions are authorized by the Act of April 2, 1859 (P. L. 353, sec. 1), to take acknowledgments and proofs of deeds, conveyances, settlements, mortgages, agreements, powers of attorney, or other instruments under seal relating to real estate, made or executed in a foreign country by husband and wife in due form of law.

Consuls and vice-consuls of the United States abroad are authorized by the Act of January 16, 1827 (P. L. 9, sec. 1, 9 Sm. L. 255), to take acknowledgment of husband and wife to all deeds and conveyances, letters of attorney and instruments of writing or proofs of their execution under their official seal. And by Act of June 1, 1891 (P. L. 159, sec. 1), deputy consuls, commercial agents, vice and deputy commercial agents or consular agents of the United States were authorized to take acknowledgments and probates of conveyances, mortgages or other instruments of writing (*Moore v. Miller*, 147 Pa. 378).

Commissioners, to be appointed by the governor of Pennsylvania, in each state of the United States and District of Columbia, are authorized by Act of April 14, 1828 (P. L. 447, secs. 1-3), to take acknowledgments and proofs of execution of any deed, mortgage, or other conveyance of lands, contracts, letters of attorney, or any writing under seal with same effect as if taken by a judge of the Supreme Court of the United States. Provisions of this act were extended to commissioners in territories by Act of April 6, 1843 (P. L. 175, sec. 1), and to commissioners in army and navy to take acknowledgment of deeds, etc., for Chester and Lancaster Counties by Act of March 27, 1862 (P. L. 192). By Act of April 28, 1876 (P. L. 52), commissioners were authorized to take the separate acknowledgments of married women.

Commissioners of the United States, duly appointed, authorized and empowered to act as such, by either the circuit or district court or courts of the United States in and for the eastern, western or other districts of Pennsylvania, were authorized and empowered by Act of May 24, 1901 (P. L. 300). in any place or county within the Commonwealth of Pennsylvania, to administer oath and affirmations, to take affidavits, to take and receive



acknowledgment or proof of all deeds, conveyances, mortgages, leases and other instruments of writing touching or concerning any lands or other property lying within or without the Commonwealth of Pennsylvania, and to take and receive the acknowledgment of any feme covert touching the right of dower or conveyance of her estate or right in or to any such lands, . . . and to take the affidavits of persons and depositions of witnesses to be used in any court or before any tribunal in or out of this Commonwealth, . . . and to use his official seal in the attestation of all such acts.

Commissioners to be appointed by the governor of Pennsylvania, in foreign countries are authorized by Act of April 21, 1856 (P. L. 484, sec. 1-3), to take acknowledgment and proof of deed or other conveyance or lease of lands lying in the State, or any contract, letter of attorney or other writing under seal.

Commissioners in chancery in any foreign country are authorized by Act of March 23, 1877 (P. L. 29, sec. 1), to take acknowledgment and probate of sales, conveyances, mortgages or instruments of writing made by husband and wife.

Judges of the Supreme Court of the United States, of the District Court of the United States, judges and justices of Supreme or Superior Court, of common pleas of any state or territory in the United States, were authorized by Act of March 23, 1819 (P. L. 144, 7 Sm. L. 190), to take acknowledgment of husband and wife to bargains and sales, deeds, conveyances, and other instruments of writing concerning lands, tenements, and hereditaments, or proof by the oath or affirmation of one or more of the subscribing witnesses.

Judges or justices of probate court or court of record of any state or territory of the United States were authorized by Act of April 10, 1849 (P. L. 619, sec. 8), under seal of court, to take acknowledgments of husband and wife of writings concerning lands or proofs of execution by one or more of the subscribing witnesses.

Judges of any court of record in any state or territory of the United States were authorized by Act of April 25, 1850 (P. L. 569, sec. 42), to take acknowledgments and proofs of execution of deeds, conveyances, and other instruments of writing of and concerning lands, tenements, and hereditaments.

Judges of Supreme Court of Pennsylvania, or justices of common pleas of county where lands lie, were authorized to take

acknowledgments of husband and wife by Act of February 24, 1770 (1 Sm. L. 307, secs. 1-3), to any grant, bargain and sale, lease, release, feoffment, deed, conveyance, or assurance for lands, tenements and hereditaments; and by Act of March 18, 1775 (1 Sm. L. 422, sec. 4), to take probate where the grantor and witnesses to any deed or conveyance are dead or cannot be had.

Judges (president) of the common pleas were authorized by Act of April 8, 1785 (2 Sm. L. 317, sec. 2), to take acknowledgment and probate of deeds and conveyances of and concerning lands in any part of the State.

Judges (associate) of the common pleas were authorized by Act of April 13, 1791 (3 Sm. L. 30, sec. 10), to take acknowledgment and probate of deeds and conveyances of and concerning lands in any part of the State.

Justices of the peace were authorized by Act of May 28, 1715 (1 Sm. L. 94, sec. 3), to take acknowledgment of grantors of bargains and sales, deeds and conveyances of land and probate of deed where grantor is dead or cannot appear. By the Act of September 30, 1791 (3 Sm. L. 58, sec. 9), they were authorized to take proof or acknowledgment of husband and wife to all instruments of writing of and concerning lands in their county; and by the Act of March 18, 1814 (6 Sm. L. 144), they were empowered to take acknowledgments of deeds for lands in any part of the Commonwealth. The acknowledgment of a letter of attorney before a justice of the peace out of the State, whose certificate was authenticated under his private seal, was held invalid (*Sweigart v. Frey*, 8 S. & R. 299).

Mayor and recorder of the City of Philadelphia, master of rolls (abolished by Act of March 29, 1809) were authorized by Act of September 30, 1791 (3 Sm. L. 58, sec. 9), to take proof or acknowledgment of husband and wife to all instruments of writing of and concerning lands in their own county. By Act of April 11, 1799 (3 Sm. L. 350, sec. 8), and also Act of Jan. 9, 1817 (6 Sm. L. 395), their power was enlarged so as to authorize them to take acknowledgment of deeds for lands in any part of the Commonwealth.

Mayor of Northern Liberties was authorized to take acknowledgments by Act of April 2, 1850 (P. L. 312, sec. 2).

Mayor, recorder and aldermen of Pittsburgh were authorized

to take probate and acknowledgment by Act of March 18, 1816 (6 Sm. L. 357, sec. 22).

Mayor and aldermen of Allegheny, by Act of April 13, 1840 (P. L. 303, sec. 17).

Mayor, recorder, and aldermen of Carbondale, by Act of March 15, 1851 (P. L. 172, sec. 30).

Mayor, recorder, and aldermen of Scranton, by Act of April 23, 1866 (P. L. 1046, sec. 31).

Mayor and recorder of Williamsport, by Act of March 22, 1870 (P. L. 531, sec. 16).

Mayor and aldermen of Lock Haven, by Act of March 28, 1870 (P. L. 633, sec. 27).

Mayor and chief magistrates of foreign cities, towns, or places where deeds are executed, were authorized by Act of May 28, 1715 (1 Sm. L. 94, sec. 4), to take acknowledgment of grantor, and by Act of February 24, 1770 (1 Sm. L. 307, sec. 3), they were authorized to take acknowledgment of husband and wife to all deeds and conveyances.

Major or officer of higher rank in military service of the United States under commission from the governor of this State was authorized by Act of April 22, 1863 (P. L. 572, sec. 2), to take acknowledgment of deed or other instrument of writing of persons actually in service.\*

Notaries public in any state or territory of the United States or in any foreign country were authorized by Act of April 22, 1863 (P. L. 548, sec. 1), to take acknowledgment of husband and wife or probate of sales, conveyances, mortgages, or other instruments of writing certified under seal of office.

Notaries public of Pennsylvania were authorized by Act of August 10, 1864 (P. L. 962, secs. 2, 3), to take acknowledgment

\*By Act of May 21, 1901, Sec. 1 (P. L. 271), any person holding the rank of major or any higher rank in the military service of the United States or in Porto Rico, the Philippine Islands, or other possessions of the United States, whether in the regular or volunteer service, may take acknowledgments of deeds, mortgages, or other instruments in writing. So also may such acknowledgments be taken before any civil officer in the service of the United States in any of such places above referred to.

Curiously enough no provision seems to have been made for the taking of acknowledgments before naval officers, though perhaps the word military may be construed to cover naval officers of equivalent rank. Certainly there would seem to be more necessity for naval officers to have this authority than the soldiery.

or proof of all deeds, conveyances, mortgages, or other instruments of writing, touching or concerning lands, tenements or hereditaments in any part of the State made by husband and wife to same extent as justices of the peace.

Officer or magistrate of other state with power in his own state to take acknowledgments was authorized by Act of December 14, 1854 (1855 P. L. 724, sec. 1-3), to take acknowledgment of grant, bargain and sale, release, or other deed of conveyance or assurance of lands, provided the certificate of the prothonotary is attached certifying that he is qualified by the law of his state to take acknowledgments. By Act of April 12, 1866 (P. L. 864, sec. 1), like power is conferred on officers and magistrates of any territory of the United States, and by Act of February 23, 1870 (P. L. 32, sec. 1), like power is extended to officers and magistrates of the District of Columbia.

Prothonotary of the Supreme Court of Northern District is authorized by Act of May 13, 1876 (P. L. 158, sec. 1), to take acknowledgment of proof of deeds entitled by law to be recorded.

Recorders of deeds were authorized by Act of April 16, 1840 (P. L. 410, sec. 7), to take acknowledgment and proof of execution of any deed, mortgage, or other conveyance, contract, letter of attorney, or any other writing of and concerning lands lying in the county for which they are appointed, and by Act of April 6, 1859 (P. L. 383, sec. 1), their power to take acknowledgment and probate is made co-extensive with the power of justices of the peace."

By Act of April 23, 1909 (P. L. 156), acknowledgments of county treasurers and commissioners, executors or administrators, or other persons acting in any official or representative capacity where now required to acknowledge deed or other instrument before a justice of the peace, may acknowledge the same before a notary public or any other officials authorized by law to take acknowledgments.

#### **71. Notary Public. How to Become One.**

*Notaries public* are, however, the most usual officers before whom acknowledgments and affidavits are taken. Any person, male or female, of good character, twenty-one years of age may be a notary in Pennsylvania. Secure an application form by writing to the Secretary of the Commonwealth, Harrisburg, Pa. This form must be filled out according to the instructions in-

dorsed thereon. It must then be indorsed by the State senator of the senatorial district in which the applicant resides. The application is then forwarded to the private secretary of the governor, together with two letters of reputable citizens recommending the applicant to be a person of good character. The application must also be accompanied by a certified check for \$25.00. If the governor of the State approves the application, he appoints the applicant and if such appointment is confirmed by the senate, the commission issues. This commission must be recorded at the office of the recorder of deeds of the county in which the notary resides, and a bond filed, and oath of office taken at the prothonotary's office. The amount of bond varies according to the county for which the notary is appointed. Ten thousand (\$10,000.00) dollars in Philadelphia County; five thousand (\$5,000.00) dollars in Allegheny County and three thousand (\$3,000.00) dollars in other counties are required. When this is done the notary may enter upon his duties. His commission is for four years.

Should the senate not be in session when the application is made, the governor is authorized by law to issue a commission which expires at the expiration of the next session of the senate. When the senate convenes they may confirm the appointment and a new commission issues for four years from the date of confirmation.

A female notary that marries must, before the performance of any notarial act, return her commission to the governor, giving her married name, whereupon a new commission will issue to her in her new name for the unexpired term without any additional charge, although a new bond must be entered.

By the Act of April 4, 1901 (P. L. 70, sec. 1), the notarial acts of a notary done in the State outside of the county for which he was commissioned are now legalized.

## **72. Probate of Deeds Where Grantor Is Dead or Unable to Appear.**

By probate of deed is meant proof of its execution by other means than acknowledgment. This may be done under the Act of May 28, 1715 (1 Sm. L. 94, sec. 5), which provides that if the grantor is dead or cannot appear, the deed may be proved by the affidavit of the two subscribing witnesses. By the Act of March 18, 1775 (1 Sm. L. 422), the oath of one witness is made sufficient. The usual method of probate is to endorse on the

deed the affidavit of the witness that he saw the grantor execute the instrument. This affidavit is signed by the witness and attested by the magistrate or justice of the peace. The affidavit need not be signed by the witnesses although it is customary to have them do so. The attestation by the justice of the peace is the necessary thing (See forms, par. 213, 214). Probate of a deed entitles it to be recorded even though not acknowledged. Should there be no subscribing witness and any party be dead, the handwriting of the deceased may be proved before a judge of court and his certificate of proof by two witnesses entitled the deed to be recorded (Act of May 25, 1878, P. L. 155, sec. 1).

## CHAPTER VI.

### Mortgages.

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#### SECTION I.

##### NATURE OF MORTGAGE. ANALYSIS.

#### 73. Definition of Mortgage, Bond and Warrant.

73. A mortgage is a pledge of an estate in land, as collateral security for the repayment of money or performance of some

other act. In form it recites the fact that the mortgagor is under obligation to pay a certain sum of money at a certain period and to pay interest at certain intervals and for the purpose of securing the performance of these covenants certain land (described) is conveyed to the mortgagee which conveyance is defeasible on the performance of the covenants set forth (see form on page 96). Accompanying a mortgage, although not necessary to its validity we usually find an instrument called a bond and warrant which consists of a bond or an undertaking to repay the money set forth at the time fixed, and a warrant of attorney authorizing an attorney-at-law to appear for and confess judgment for the obligee (see form, pages 104, 106).

The bond and mortgage are separate and distinct instruments but are securities for one and the same debt. A mortgage creates a lien, as will be hereinafter explained on a certain property. The bond and warrant creates no lien until entered of record as a judgment when default is made, when it becomes a general judgment lien against all of the defendant's real estate. In some instances when the mortgaged premises have depreciated in value and the mortgagor has other property the advantages of proceeding on the bond and warrant are obvious. For this reason a bond and warrant is usually demanded and given along with the mortgage.

#### **74. History and Development of Mortgage.**

A brief and resumé of the history of the development of mortgages is interesting as well as instructive. The early English used two forms of mortgages or pledges of land, one known as the "vivum vadium" and the other as the "mortuum vadium." In a vivum vadium the land was conveyed to the creditor to hold until out of the rents, issues and profits the creditor could pay the debt, when the debtor was entitled to receive back the land. In the mortuum vadium the land was conveyed unto the creditor, who took possession and held it until the debt was paid; during this time the rents, etc., were not applied to the reducing of the debt, but were retained by the creditor. Manifestly this was a most vigorous and harsh kind of a pledge, and soon fell into disuse. Later this form was modified so that possession of the land was not given to the creditor unless the debt was not paid upon a certain day fixed. This modification became the modern mortgage so called, says Littleton, "because if the money was



not paid on the day fixed the land was forfeited and became dead to the mortgagor. If it was paid then the pledge became dead to the mortgagee." It will be observed that this mortgage differed from its forerunners, the *vivum vadium* and *mortuum vadium* in this very material point. In the latter class of pledges possession of the land was given when the debt was created and the instrument made, in the former the mortgagee or creditor never was given possession of the land unless the mortgage debt was not paid.

#### **75. Origin of Equity Redemption of a Mortgage.**

The common law form of the mortgage was thus strictly an estate on condition. In other words, if the condition was performed, *i. e.*, if the money was paid at the time stipulated, the interest of the mortgagee was extinguished. If, on the other, the condition was broken, that is, if the money was not paid, an absolute fee simple estate vested in the mortgagee and all right of the mortgagor was gone. It frequently happened that land of great value was mortgaged for an amount equal to half the value and very often less than half value. The forfeiture in such instances was a very great hardship against which the common law courts could give no relief. In such instances the mortgagors turned to the equity courts (See Par. 10 on Equity, page 24) for relief. The equity courts decided that while it was true, strict interpretation of the common law vested in the mortgagee absolute title upon the breach of the condition at the time fixed, still justice required that the mortgagor be given a further opportunity to redeem the property and if he could pay back to the mortgagee the debt, interest and costs he should have his land back. This right to redeem the property after forfeiture naturally came to be called the "Equity Redemption." And the name still survives in the term expression of a person's "equity" in property by which is meant, of course, the interest a person has in a property over and above the mortgage.

At first no time was set within which the right of redemption in equity had to be applied for, and it naturally followed that the mortgagee felt insecure as to his right to the property even though the land was forfeited and the mortgagee had made no move in equity to redeem it. This led to great uncertainty and worked a hardship upon the mortgagee since he feared to improve the land because his occupation might later be disturbed.

Consequently the mortgagees in turn began to turn to the equity court for relief and filed what was known as a "bill of foreclosure," in which he asked to have the mortgagor's right of equity redemption ended or "foreclosed" as it were. The equity court would then fix a certain day at or before which the debtor, that is the mortgagor was required to pay his debt and if he failed to obey the order of the court the estate became absolutely forfeited to the mortgagee. Of course, this to a certain extent again involved a hardship upon the mortgagor, who often was willing but unable to pay the money to redeem his property. The matter was finally and most justly settled by a statute or act of Parliament which authorized the equity court to sell the property at the request of either party and to pay the balance of the proceeds realized from the sale to the mortgagor. In some states, New Jersey, *e. g.* foreclosure suits are still brought in equity. In Pennsylvania and other states by statute is provided a shorter and less costly method of proceeding by writ of scire facias in the common law courts.

#### 76. Effect of a Mortgage.

It will therefore be seen that the modern mortgage is totally different in its effect as compared with the common law form and is now to be regarded as a pledge of an estate in land to secure the performance of some act usually the payment of money. It becomes when recorded a lien against the property which cannot be divested by private sale and if there are no prior judgment liens even by judicial sale of the property under any subsequent liens.

#### 77. Form of Mortgage and Analysis of Principal Parts Thereof.

The usual form of a mortgage in Pennsylvania is as follows.

##### Form of Sci. Fa. Mortgage.\*

THIS INDENTURE, made the *second* day of *January* in the year of our Lord one thousand nine hundred and *seven* (1907) between *Andrew Black, Grocer, of the City of Philadelphia, State of Pennsylvania*, (hereinafter called the Mortgagor ), of the one part, and *Richard Brown, Gentleman, also of the City of*

\*This is the regular printed form of mortgage which may be purchased together with the accompanying bond and warrant at any law blank stationer. The words in italics are to be filled in by the conveyancer as circumstances may require.

*Philadelphia, State of Pennsylvania*, (hereinafter called the Mortgagee ), of the other part.

WHEREAS, the said Mortgagor , in and by a *certain* Obligation or Writing obligatory under his hand and seal duly executed, bearing even date herewith, stands *firmly* bound unto the said Mortgagee in the sum of *Seven Thousand (\$7,000.00)* Dollars lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of the said Obligation, a *fire* policy or policies of insurance in good and approved company or companies, duly assigned as collateral security to the Mortgagee or *his* Executors, Administrators or Assigns, to an amount not less than *Thirty-five Hundred (\$3500.00) Dollars*, upon the buildings on the premises hereinafter described, and conditioned for the payment of the just sum of *Thirty-five Hundred (\$3500.00) Dollars* lawful money as aforesaid, *payable at the expiration of five years from the date thereof*, together with interest payable *semi-annually* at the rate of *five and four-tents per cent.* per annum, without any fraud or further delay; and for the production to the said Mortgagee or *his* Executors, Administrators or Assigns, on or before the *First* day of *September* of each and every year, of receipts for all taxes and water rates of the current year assessed upon the mortgaged premises. Provided, however, and it is thereby expressly agreed, that if at any time default shall be made in the payment of interest as aforesaid, for the space of *thirty* days after any *half-yearly* payment thereof shall fall due, or in the prompt and punctual maintenance of said *fire* insurance so assigned as aforesaid, or in such production to the Mortgagee or *his* Executors, Administrators or Assigns, on or before the *First* day of *September* of each and every year, of such receipts for such taxes and water rates of the current year upon the premises mortgaged, then and in such case the whole principal debt aforesaid, *Thirty-five Hundred (\$3500.00) Dollars* shall, at the option of the said Mortgagee or *his* Executors, Administrators or Assigns, become due and payable immediately; and payment of said principal debt, *Thirty-five Hundred (\$3500.00) Dollars* and all interest thereon, may be enforced and recovered at once, any thing therein contained to the contrary notwithstanding. AND PROVIDED FURTHER, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum of *Thirty-five Hundred (\$3500.00) Dollars* at maturity, or of said interest, or in production of said receipts for taxes and water rates, within the time specified, a writ of Fieri Facias is properly issued upon the judgment obtained upon said Obligation, or by virtue of said Warrant of Attorney, or a writ of Scire Facias is properly issued upon this Indenture of Mortgage, an attorney's commission for collection, viz: *five* per cent., shall be payable, and shall be recovered in addition to all principal

and interest besides costs of suit, as in and by the said recited Obligation and the Condition thereof, relation being thereunto had may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH, That the said Mortgagor, as well for and in consideration of the aforesaid debt or principal sum of *Thirty-five Hundred (\$3500.00) Dollars* and for the better securing the payment of the same, with interest as aforesaid, unto the said Mortgagee, *his* Executors, Administrators and Assigns, in discharge of the said recited Obligation, as for and in consideration of the further sum of One Dollar unto *him* in hand well and truly paid by the said Mortgagee at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, *hath* granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents *doth* grant, bargain, sell, alien, enfeoff, release and confirm unto the said Mortgagee, *his* Heirs and Assigns, *All That Certain lot or piece of ground with the messuage or tenement thereon erected Situate on the West side of Y Street at a distance of three hundred and Thirty-seven (337) feet Northward from the North Side of X Street in the Fiftieth Ward of the City of Philadelphia, Containing in front or breadth on said Y Street Eighteen (18) feet and extending of that width in length or depth Westward between two parallel lines at right angles to the said Y Street One Hundred (100) feet to a certain three feet wide alley, extending Northward from X Street to Z Street.*

*Being the same premises which Edward Frame and Wife by indenture bearing date the Fifth day of July, A. D. 1906, and recorded in the Office for the Recording of Deeds in and for the County of Philadelphia in Deed Book W. S. V. No. 1196, Page 213, &c., granted and conveyed unto the said Andrew Black in fee.*

*Together with the free and common use, right, liberty, and privilege of the aforesaid alley as and for a passage way and water course at all times hereafter forever. AND*

TOGETHER with all and singular the buildings, improvements, Ways, Waters, Water-Courses, Rights, Liberties, Privileges, Improvements, Hereditaments and Appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof,

TO HAVE AND TO HOLD the said *lot or piece of ground with buildings thereon erected*, Hereditaments and Premises hereby granted, or mentioned and intended so to be, with the Appurtenances, unto the said Mortgagee, *his* Heirs and Assigns, to and for the only proper use and behoof of the said Mortgagee *his* Heirs and Assigns forever.

PROVIDED ALWAYS, nevertheless, that if the said Mortgagor *his* Heirs, Executors, Administrators or Assigns, do and shall well and truly pay, or cause to be paid, unto the said Mortgagee *his* Executors, Administrators or Assigns, the aforesaid debt or

principal sum of *Thirty-five Hundred (\$3500.00) Dollars* on the day and time hereinbefore mentioned and appointed for payment of the same, together with interest as aforesaid, and shall produce to the said Mortgagee or *his* Executors, Administrators or Assigns, on or before the *First* day of *September* of each and every year, receipts for all taxes and water rates of the current year assessed upon the mortgaged premises, and shall keep and maintain said *fire* insurance so assigned as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of any thing, herein mentioned to be paid or done, that then, and from thenceforth, as well this present Indenture, and the estate hereby granted, as the said recited Obligation shall cease, determine and become void, any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding. And provided also, that it shall and may be lawful for the said Mortgagee, *his* Executors, Administrators or Assigns, when and as soon as the principal debt or sum hereby secured shall become due and payable as aforesaid, in case default shall be made for the space of *thirty* days in the payment of interest on the said principal sum, *Thirty-five Hundred (\$3500) Dollars* after any *semi-annual* payment thereof shall fall due, or in the prompt and punctual maintenance of said *fire* insurance so assigned as aforesaid, or in case there shall be default in the production to the said Mortgagee or *his* Executors, Administrators or Assigns, on or before the *First* day of *September* of each and every year, of such receipts for such taxes and water rates of the current year assessed upon the mortgaged premises, to sue out forthwith a writ or writs of Scire Facias upon this Indenture of Mortgage, and to proceed thereon to judgment and execution, for the recovery of the whole of said principal debt, *Thirty-five Hundred (\$3500.00) Dollars* and all interest due thereon, together with an attorney's commission for collection, viz.: *five* per cent., besides costs of suit, without further stay, any law, usage or custom to the contrary notwithstanding.

In Witness Whereof, the said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

Sealed and delivered in the  
presence of us:

*Wm. F. Belsterling,*

*John Doe.*

*Andrew Black.* (Seal.)

On the *Second* day of *January*, Anno Domini *1907*, before me, *the subscriber, a Notary Public for the Commonwealth of Pennsylvania*, personally appeared the above-named *Andrew Black* and in due form of law acknowledged the above Indenture of Mortgage to be *his* act and deed, and desired the same might be recorded as such.

Witness my hand and *notarial* seal the day and year aforesaid.

Wm. F. Belsterling. (Seal.)

Notary Public.

*Commission expires February 1, 1901.*

By examination thereof it will be seen that it consists of two principal parts; first a conveyance of the property; and second a defeasance, *i. e.*, a contemporaneous agreement that the conveyance shall be as security only.

The conveyance part extends from the beginning of the instrument to the words "Provided Always Nevertheless." This conveyance part may in turn be divided into two parts consisting of (a) the premises or whereas clause and (b) the conveyance proper or deed.

(1) *Conveyance Part.*—The premises includes that part which reads as follows:—

THIS INDENTURE, made the Second day of January in the year of our Lord one thousand nine hundred and seven (1907) between Andrew Black, Grocer, of the city of Philadelphia, State of Pennsylvania (hereinafter called the Mortgagor), of the one part, and Richard Brown, Gentlemen, also of the City of Philadelphia, State of Pennsylvania (hereinafter called the Mortgagee), of the other part.

WHEREAS, the said Mortgagor, in and by a certain Obligation or Writing obligatory under his hand and seal duly executed, bearing even date herewith, stands firmly bound unto the said Mortgagee in the sum of Seven Thousand (\$7,000.00) Dollars, lawful money of the United States of America, conditioned to keep and maintain at all times until, the full discharge of the said Obligation, a fire policy or policies of insurance in good and approved company or companies, duly assigned as collateral security to the Mortgagee or his Executors, Administrators or Assigns, to an amount not less than Thirty-five Hundred (\$3500.00) Dollars upon the buildings on the premises hereinafter described, and conditioned for the payment of the just sum of Thirty-five Hundred (\$3500.00) Dollars lawful money as aforesaid, payable at the expiration of five years from the date hereof, together with interest payable semi-annually at the rate of five and four-tenths per cent. per annum, without any fraud or further delay; and for the production to the said Mortgagee or his Executors, Administrators or Assigns, on or before the First day of September of each and every year, of receipts for all taxes and water rates of the current year assessed upon the mortgaged premises. PROVIDED, HOWEVER, and it is thereby expressly agreed, that if at any time default shall be made in the payment of interest as aforesaid, for the space of thirty days after any

half-yearly payment thereof shall fall due, or in the prompt and punctual maintenance of said fire insurance so assigned as aforesaid, or in such production to the Mortgagee or his Executors, Administrators or Assigns on or before the First day of September of each year and every year, of such receipts for such taxes and water rates of the current year upon the premises mortgaged, then and in such case the whole principal debt aforesaid, Thirty-five Hundred (\$3500.00) Dollars shall, at the option of the said Mortgagee or his Executors, Administrators or Assigns, become due and payable immediately; and payment of said principal debt, Thirty-five Hundred (\$3500.00) Dollars and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary notwithstanding. AND PROVIDED FURTHER, however, and it is thereby expressly agreed, that at any time thereafter, by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum of Thirty-five Hundred (\$3500.00) Dollars at maturity, or of said interest, or in production of said receipts for taxes and water rates, within the time specified, a writ of Fieri Facias is properly issued upon the judgment obtained upon said Obligation, or by virtue of said Warrant of Attorney, or a writ of Scire Facias is properly issued upon this Indenture of Mortgage, an attorney's commission for collection, viz: five per cent. shall be payable and shall be recovered in addition to all principal and interest besides costs of suit, as in and by the said recited Obligation and the Condition thereof, relation being thereunto had may more fully and at large appear."

As will be seen these premises recite the fact that the mortgagor has obligated himself to pay the sum of money therein set forth as well as the conditions under which it is payable. These conditions unusually include payment of interest in half-yearly payments at the rate set forth; insurance premiums necessary to be paid in order to protect the mortgagee against the destruction of the premises by fire; a promise to produce receipts for taxes assessed against the property for the current year on or before the date set forth which is usually September first, because there is no penalty on taxes paid before August 31.

The failure to comply with any of these as the following clause sets forth, makes the principal of the mortgage immediately due and payable at the option of the mortgagee. Then follows what is known as the Sci. Fa. Clause which clause provides that the mortgagee shall have the right to issue among other writs a writ of scire facias for the collection of the mortgage. A writ of scire facias is a writ issued upon a record and is expeditious procedure of obtaining a judgment. It makes a very efficient way of fore-

closing on a mortgage and appears therefore most always in the printed blanks of mortgages used in Pennsylvania. This procedure was provided by the Act of Jan. 12, 1705, P. L. 59, and its legality has been established by the Supreme Court of Pennsylvania (see *Atkinson v. Walton*, 162 Pa. 219), so that now it is the favorite method of proceeding to enforce the terms of the mortgage although other remedies are still open. Included in the sci. fa. clause is also usually found the agreement to pay an attorney's commission for collection at the rate agreed on, usually five per cent. This attorney's commission has been held by the courts to be in the nature of a penalty and subject to the equitable control of the court and when excessive will be reduced to a reasonable compensation. However such an agreement is strictly legal (*Daley v. Maitland*, 88 Pa. 384; *Cunningham v. McCready*, 219 Pa. 594).

(b.) *Conveyance Proper*.—The other part, to wit, the conveyance proper or deed is a pure fee simple deed and of course reads exactly like a deed from the consideration clause to the end of the habendum clause. Only the conclusion and warranty clause is omitted (compare with deed on page 64). In this part of the mortgage is inserted the description of the property mortgaged (see form of mortgage page 98) and following it the recital at the conclusion of which is placed, should the mortgage be a second mortgage, the appropriate under and subject clause which in such case would read as follows:—

Under and subject nevertheless to a certain mortgage debt or principal sum of ..... Dollars with interest thereon as the same may become due and payable (form page 383).

(2) *Defeasance*.—The remainder (see form page 98), of the mortgage is the defeasance. This is the contemporaneous agreement which provides that if the mortgagee is paid the principal of the debt on the day set forth and the conditions set forth in the conveyance part of the agreement be faithfully kept, then the indenture and estate thereby granted as well as the recited obligation or bond shall cease, determine and become void. This defeasance clause therefore converts an apparent absolute deed into a pledge.

#### 78. Where Defeasance is not Annexed to the Conveyance.

As above intimated although usually the conveyance part of a mortgage and defeasance are always found annexed together or



in one instrument, the law does not require them to be annexed together, but when separate they must be executed in strict accordance with the terms of the Act of June 3, 1881, P. L. 84. The requirements of this act are well stated in the words of Justice Gordon delivering an opinion of the Supreme Court where he says:—

“There is now but one method left by which a deed absolute on its face can be reduced to a mortgage; the defeasance must not only be in writing and of the same date as that of the deed, but must also be signed, sealed, acknowledged and delivered by the grantee in the deed to the grantor. Furthermore it must be recorded in the recorder of deeds’ office in the county where the land lies within sixty days after the execution thereof” (*Sankey v. Harley*, 118 Pa. 30. See also *Green v. Race*, 195 Pa. 325. *Safe Deposit Co. v. Linton*, 213 Pa. 105. *O'Donnell v. Vander-saal*, 213 Pa. 551).

Under decisions of this act a defeasance was not received in evidence to defeat an absolute deed unless it was made and recorded in accordance with the provisions of this act. The provisions of this act, however, have been modified in two material particulars by the Act of April 23, 1909, P. L. 137, which while still requiring that the defeasance in order to reduce a deed absolute on its face, to a mortgage, be in writing, signed and delivered by the grantee to the grantor, it omits the words made at the same time the deed is made. Further this new act provides “*and in so far as it may effect any subsequent grantee or mortgagee of such real estate for value*” unless it is also acknowledged and recorded, &c., *before the execution and delivery of such subsequent grant or mortgage*. The words in italics are not contained in the old Act of June 3, 1881 and are manifestly more equitable to both parties since the only ones who ought really be protected by enforcing the recording are subsequent grantees and mortgagees who have given value on faith of the absolute deed appearing on the record. Thus is done away with the hardship which followed where the intended mortgagee claimed the benefit of the omission to comply with the technical requirements of the Act of 1881, and thus secured for himself a fee simple title where he was only meant to have a mortgage.

In practice it is best to avoid all questions by adhering to the form wherein the conveyance and defeasance are contained in one instrument.

#### 79. Certificate of Residence of Mortgagees.

By the Act of April 29, 1909, P. L. 289, all Mortgages, assignments or agreements given to secure the payment of money at interest must contain a certificate signed by the mortgagee, assignee, &c., or his or her duly authorized Agent setting forth the precise residence of the mortgagee, assignee or party entitled to the interest. The Recorder is bound under this act to refuse to receive for record any such mortgage assignment or agreement unless it contains such a certificate of Residence. The object of this act was to enable the tax assessors to ascertain the names and addresses of all persons who have money at interest in order that they may be properly taxed. The certificate required need not be inserted in the body of the instrument. Nor is it required to be any more formal than a mere statement of Residence such as the following,

I hereby certify that my residence is 1321 M Street,  
Philadelphia, Pa.

RICHARD BROWN.

This may be indorsed on the back of the Mortgage or written along the margin. This certificate need not necessarily be made by the mortgagee; his agent or any one cognizant of his address may certify it.

#### 80. Formal Parts of the Bond and Warrant of Attorney. Form. Bond and Warrant.

KNOW ALL MEN BY THESE PRESENTS, That *I, Andrew Black, Grocer, of the City of Philadelphia, State of Pennsylvania* (hereinafter called the Obligor), am held and firmly bound unto *Richard Brown, Gentleman, also of the City of Philadelphia, State of Pennsylvania* (hereinafter called the Obligee), in the sum of *Seven Thousand (\$7000.00) Dollars* lawful money of the United States of America, to be paid to the said Obligee *his* certain Attorney, Executors, Administrators or Assigns: to which payment well and truly to be made, *I* do bind and oblige myself, *my* Heirs, Executors and Administrators, and every of them firmly by these Presents. Sealed with *my* Seal. Dated the *Second* day of *January* in the year of our Lord one thousand nine hundred and *seven* (1907).

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above-bounden Obligor *his* Heirs, Executors or Administrators,

or any of them, shall and do well and truly keep and maintain at all times, until the full discharge of this obligation, a *fire* policy or policies of insurance, in good and approved company or companies, duly assigned as collateral to the Obligee or *his* Executors, Administrators or Assigns, to an amount not less than *Thirty-five Hundred (\$3500.00) Dollars*, upon the buildings on the premises mortgaged by the Mortgage securing this Obligation, and shall and do well and truly pay, or cause to be paid unto the above-named Obligee *his* certain Attorney, Executors, Administrators or Assigns, the just sum of *Thirty-five Hundred (\$3500.00) Dollars* lawful money as aforesaid, *payable at the expiration of five years from the date hereof*, together with interest thereon payable *semi-annually* at the rate of *five and four-tenths* per cent. per annum, without any fraud or further delay; and shall produce to the said Obligee or *his* Executors, Administrators or Assigns, on or before the *First* day of *September* of each and every year, receipts for all taxes and water rates of the current year assessed upon the mortgaged premises; then the above Obligation to be void, or else to be and remain in full force and virtue: Provided, however, and it hereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid, for the space of *thirty* days after any *semi-annual* payment thereof shall fall due, or in the prompt and punctual maintenance of said *fire* insurance so assigned as aforesaid, or in such production to the Obligee or *his* Executors, Administrators or Assigns, on or before the *First* day of *September* of each and every year, of such receipts for such taxes and water rates of the current year upon the premises mortgaged, then and in such case the whole principal debt aforesaid, *Thirty-five Hundred (\$3500.00) Dollars* shall, at the option of the said Obligee *his* Executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, *Thirty-five Hundred (\$3500.00) Dollars* and all interest thereon, may be enforced and recovered at once, any thing herein contained to the contrary notwithstanding. And, Provided further, however, and it is hereby expressly agreed, that if at any time hereafter, by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum, *Thirty-five Hundred (\$3500.00) Dollars* at maturity, or of said interest, or in production of said receipts for taxes and water rates, within the time specified, a writ of *Fieri Facias* is properly issued upon the Judgment obtained upon this Obligation, or by virtue of the warrant of attorney hereto attached, or a writ of *Scire Facias* is properly issued upon the accompanying Indenture of Mortgage, an attorney's commission for collection, viz.: *five* per cent., shall be payable, and shall be recovered in addition to all principal and interest then due, besides costs of suit.

Sealed and delivered in the presence of us:	}	<i>Andrew Black.</i> (Seal.)
<i>Wm. F. Belsterling,</i>		
<i>John Doe.</i>		

To *Allen Jones, Esq.*, Attorney of the Court of Common Pleas, at.....in the County of.....in the State of Pennsylvania, or to any other Attorney of the said Court, or any other Court there or elsewhere.

WHEREAS, *I, Andrew Black, Grocer, of the City of Philadelphia, State of Pennsylvania*, in and by a certain Obligation, bearing even date herewith, do stand firmly bound unto *Richard Brown, Gentleman, of the City of Philadelphia, State of Pennsylvania*, in the sum of *Seven Thousand (\$7000.00) Dollars* lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of the said Obligation, a *fire* policy or policies of insurance, in good and approved company or companies, duly assigned as collateral to the Obligee or *his* Executors, Administrators or Assigns, to an amount not less than *Thirty-five Hundred (\$3500.00) Dollars*, upon the buildings on the premises mortgaged by the Mortgage securing the said Obligation, and conditioned for the payment of the just som of *Thirty-five Hundred (\$3500.00) Dollars* lawful money as aforesaid, *payable at the expiration of five years from the date hereof*, together with interest thereon payable *semi-annually* at the rate of *five and four-tenths* per cent. per annum, and for the production to the Obligee or *his* Executors, Administrators or Assigns, on or before the *First* day of *September* of each and every year, of receipts for all taxes and water rates of the current year assessed upon the premises described in the Mortgage accompanying said Obligation:

Provided, however, and it is thereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid for the space of *thirty* days after any *semi-annual* payment thereof shall fall due, or in the prompt and punctual maintenance of said *fire* insurance so assigned as aforesaid, or in such production to the Obligee or *his* Executors, Administrators or Assigns, on or before the *First* day of *September* of each and every year, of such receipts for such taxes and water rates of the current year assessed upon the premises described in the Mortgage accompanying said Obligation, then and in such case the whole principal debt aforesaid, *Thirty-five Hundred (\$3500.00) Dollars* shall, at the option of the said Obligee *his* Executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, *Thirty-five Hundred (\$3500.00) Dollars* and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary notwithstanding. And Provided further, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default

in the maintenance of said insurance, or in payment, either of said principal sum, *Thirty-five Hundred (\$3500.00) Dollars* at maturity, or of said interest, or in production of said receipts for taxes or water rates within the time specified, a writ of Fieri Facias is properly issued upon the Judgment obtained upon said Obligation, or by virtue of this warrant, or a writ of Scire Facias is properly issued upon the accompanying Indenture of Mortgage, an attorney's commission for collection, viz.: *five* per cent., shall be payable, and shall be recovered in addition to all principal and interest then due, besides costs of suit. These are to desire and authorize you, or any of you, to appear for *me, my Heirs, Executors or Administrators*, in the said Court or elsewhere, in an appropriate form of action there or elsewhere brought or to be brought against *me, my Heirs, Executors or Administrators*, at the suit of the said Oblige *his* Executors, Administrators or Assigns, on the said Obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against *me, my Heirs, Executors or Administrators*, for the sum of *Thirty-five Hundred (\$3500.00) Dollars* lawful money of the United States of America, debt, besides costs of suit, and an attorney's commission of five per cent., in case payment has to be enforced by process of law as aforesaid, by Non sum informatus, Nihil dicit, or otherwise, as to you shall seem meet: And for your, or any of your so doing, this shall be your sufficient warrant. And do hereby, for *myself, my Heirs, Executors and Administrators*, remise, release and forever quit claim unto the said Oblige *his* certain Attorney, Executors, Administrators and Assigns, all and all manner of error and errors, misprisions, misentries, defects and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In Witness Whereof, I have hereunto set my hand and seal this *second* day of *January*, in the year of our Lord one thousand nine hundred and *twelve* (1912).

Sealed and delivered in the  
presence of us:

*Wm. F. Belsterling,*  
*John Doe.*

} *Andrew Black.* (Seal.)

The bond and warrant of attorney to confess judgment are really two separate instruments although they are usually spoken of as if but one, and this probably because they are usually fastened together. The bond itself as may be seen from the form set forth above recites the fact that the maker thereof called the obligor, who is the mortgagor in the mortgage, holds himself indebted to the oblige in the sum of seven thousand (\$7,000.00) dollars. The amount of the bond is by custom made

in double the amount of the sum really due, doubtless in order to amply protect the obligee as to interest and costs, should proceedings thereon become necessary. Following the bond proper which is nothing more or less than an acknowledgment of indebtedness, comes the conditions of the bond. The conditions of the bond are the same as those found in the mortgage, viz. to maintain fire insurance as collateral in an amount equal to the sum due (here \$3,500.00) upon the buildings on which the mortgage is made; to repay at the expiration of the term fixed (here five years) the principal sum due (here \$3,500.00); to pay taxes and water rents assessed on the mortgaged premises and to produce the receipts therefor at the time fixed (usually September 1st, every year); to pay interest at the rate fixed, and the whole principal sum at maturity. It then recites that if these conditions are performed the obligation or bond is to become void or otherwise to remain in full force, virtue and effect. It provides further that if default is made in the production of the taxes and water rate receipts or in the payment of interest or maintenance of the insurance, then the whole amount of the bond is to become immediately due and payable and proceedings may be commenced to recover the same, &c.; or judgment may be confessed against the obligor on the accompanying warrant of attorney, with an attorney's commission for collection of five per cent., added to the amount due; or that proceedings might be commenced on the accompanying indenture of mortgage.

**81. Proceedings on the Bond and Warrant and on a Mortgage Compared. Mortgagor's Liability.**

The warrant of attorney is an instrument which provides the person with a short cut to obtain judgment. Ordinarily to recover money due a suit must be instituted which if contested may result in some time, before a judgment can be recovered and even if uncontested it takes about three weeks before judgment can be entered. Obviously an instrument which enables a judgment to be placed on record instantly without any delay whatsoever is of immense advantage, especially if it is desirable to beat out, in order to obtain a prior lien, some other creditor who is suing to obtain a judgment. A warrant of attorney is therefore a valuable addition to the bond and proceedings thereon afford a complete remedy exclusive of the mortgage proceedings. A judgment so entered becomes a general judgment lien not only against the

mortgaged premises but against all property owned by the mortgagor at the time the judgment is entered. But its disadvantage lies in the fact that the lien dates not from the time the money was loaned, but from the time the judgment is entered. A mortgage, however, is a lien from the time it is recorded against the premises mortgaged. It will be seen therefore that by having the loan secured both by a mortgage and bond and warrant, the mortgagee has his choice of remedies and has not only a remedy against the property mortgaged but a personal right against the mortgagor.

*How Personal Liability on Bond may be Avoided. Straw Man.*—It is to avoid this personal liability on the bond that mortgages are sometimes made by a so-called "straw man." That is, if a responsible person desires to have a mortgage placed upon his property or properties he is about to buy without personal liability, he causes the property to be conveyed to some person without financial responsibility, the straw man, and this straw man then executes the mortgage and bond and warrant to the mortgagee, then conveys the premises, subject to the mortgage thus created, to the real owner. In this way the straw man only is liable on the bond and warrant and being financially irresponsible, the mortgagor, is confined solely to his remedy on the mortgage. This method of protecting oneself from personal liability on a mortgage is usually practiced by persons who deal extensively in real estate. Such men from the very nature of their business cannot afford to be personally responsible for the payment of the principal of a mortgage after they have conveyed away the property, yet they would be for the term of the mortgage if they executed the bond.

Where no straw man is used to create a mortgage the personal liability of the mortgagor continues even after he has parted with the title, in fact as long as the mortgage remains. The act of 1903 (Act of April 28, 1903, P. L. 327), however, provides a method by which a mortgagor who has parted with the title to the mortgaged premises may call in his bond and warrant after expiration of the term of the mortgage. Under this act he must first tender the mortgagee (or his assignee or whoever may be the holder of the mortgage) the full amount of the mortgage principal with interest to day of tender, and demand that the mortgage be assigned to him. Upon refusal of the holder of the mortgage to accept tender and comply with the demand, the mort-

gagor may petition court for a decree relieving him of all personal liability under the bond and warrant. Thereafter the holder of the mortgage must look solely to the land as his security. This act furnishes a full and complete method of procedure and must be strictly followed (*Brecht v. Bealis*, 19 Pa. D. R. 664). The decree obtained by the mortgagor may be indexed at the prothonotary's office and noted on the margin of the record of the mortgage at the recorder of deeds office.

## SECTION II.

WHO HAS AND WHO HAS NOT POWER TO MAKE A MORTGAGE.

### 82. *Individuals. Married Women.* -

*Individuals.*—In general anyone having capacity to alienate (See ante chapter on Alienation. Page 36) real property has a right to mortgage it. A married man can mortgage his real estate without his wife joining in the mortgage even though he cannot sell. And a purchase at a sheriff's sale upon foreclosure of this mortgage takes it free from the wife's interest of dower (See Section on Dower, page 186). Unless of course it is made with the fraudulent intent of barring the wife dower (*McClurg v. Schwartz*, 87 Pa. 521). While a husband can mortgage without his wife joining, by Act of June 8, 1893 (P. L. 344, Sec. 1). a wife is forbidden from making a mortgage without her husband joining. Since the Act of June 4, 1901, P. L. 67, her acknowledgment of a mortgage need no longer be separate and apart from her husband. Should the wife be divorced, or if she be living separate from her husband under articles of agreement wherein her husband has released all his rights, interest in her property, then she may convey or encumber or mortgage her estate as though she were a feme sole (see Par. 34-35) Act of June 9, 1897, P. L. 212. The purposes for which the wife uses the money obtained by a mortgage does not affect the validity of the instrument, thus she may mortgage the property to raise money for her husband's use (*Daubert v. Eckert*, 94 Pa. 255). Or she may mortgage her estate to secure a debt due by her husband (*Hagenback v. Philips*, 112 Pa. 284; *Jamison v. Jamison*, 3 Wh. 457).

Although a married woman can not mortgage her estate without the joinder of her husband curiously enough by statute (Act of May 25, 1878, P. L. 151, Sec. 1), she is permitted to satisfy or assign a judgment or mortgage alone.



**83. Infants.**

Under this term we include all persons under twenty-one years of age. An infant, cannot make a deed for reasons hereinbefore set forth (see ante Par. 32). And since he cannot make a valid deed it follows he cannot make a valid mortgage. Such a mortgage if made becomes like an infant's deed, voidable and if not repudiated within a reasonable time after the infant arrives of age it is regarded as having been ratified and becomes binding (*Johnson v. Furnior*, 69 Pa. 455).

**84. Other Persons Under Disability.**

With regard to other persons under disability such as lunatics, etc., it may generally be stated that their power to mortgage depends upon their power to alienate or convey property. This has been already covered under the chapter on alienation (ante page 36). By consulting Chapter III Part III and applying the rule that whoever cannot make a deed, cannot mortgage, the question as to whether such person has the right to mortgage becomes plain.

**85. Trustees.**

If a trustee has the power given him by the will or deed creating the trust, to sell, he is regarded as having also the power to mortgage without express mention of it (*Zane v. Kennedy*, 73 Pa. 182). Conversely if he has no power to sell he has no power to mortgage unless that right is expressly given.

**86. Corporations.**

As set forth in the chapter on alienation paragraphs 38-39, a corporation is so far as it has power to hold land may alienate as freely as an individual unless restricted by statute. One of the restrictions by statute is the power to mortgage. The power to mortgage has been restricted by law in Pennsylvania to the extent that certain conditions must be complied with in order for the mortgage to be valid; these restrictions have been passed mostly for the benefit of the stockholders. To avoid a reckless incurring of indebtedness, the constitution of the State of Pennsylvania adopted 1874 directed, that "the stock and indebtedness of corporations shall not be increased except in pursuance of a general law nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to

be held after sixty days' notice given in pursuance of law." (Article XVII Sec. 7 Constitution of Pennsylvania.) In 1889 was passed the Act of May 21, P. L. 257, which amended the prior act of April 18, 1874, and which now allows corporations to borrow money by bond and mortgage on their real property to an amount not exceeding one-half of their capital stock paid in and at a rate of interest not to exceed six per cent. per annum. Corporations not for profit are authorized by Act of June 25, 1901, P. L. 599, "to borrow money and secure any indebtedness (*i. e.* to mortgage) created by it by issuing bonds not to exceed the sum of \$500,000.00 with or without interest coupon attached thereto and to secure the same by mortgage or mortgages, for the use of its bondholders upon its property real and personal, and its franchises but no such bond or indebtedness shall bear a rate of interest exceeding six per centum per annum."

It will be seen, therefore, that a mortgage by a corporation must, in order to be valid, comply with the law. If it operates to increase the indebtedness of the corporation the consent of its stockholders must be obtained as provided in the Constitution of the State. If the mortgage is, however, only to secure an existing indebtedness, then obviously the special consent of the stockholders is not required (*Ahl v. Rhoads*, 84 Pa. 319; *Powell v. Blair*, 133 Pa. 550). It is to be recommended that a conveyancer who is not a member of the bar should always consult an attorney before attempting to arrange a mortgage for a corporation client.

### 87. Corporation Mortgage to Secure Bond Issue.

If the mortgage of the corporation is made to an individual mortgagee, the form of the mortgage and bond and warrant is similar to an individual's mortgage. See form of Corporation Mortgage in forms appended to this book (par. 258). Where, however, the mortgage is made by a large corporation for the purpose of raising a large amount which no single individual will loan, then the mortgage is made to a trustee for the benefit of bondholders and the amount divided among a number of individuals. *E. g.*, suppose a corporation desires to borrow \$100,000.00 and to secure it by a mortgage against its property this amount is divided into 100 bonds of \$1,000.00 each. Each individual receives one bond for every \$1,000.00 he advances. Suppose 100 individuals each put up \$1,000.00, obviously the cor-

poration cannot execute a mortgage to each so it executes one mortgage for \$100,000.00 to a trustee who represents all the bondholders (See form, par. 259). If default is made in the payment of the principal or interest any bondholder may demand that the trustee proceed to foreclose and if the trustee neglects to do so the bondholder may by appropriate proceedings in court compel a foreclosure and sale.

### SECTION III.

#### KINDS OF MORTGAGES.

##### 88. Purchase Money Mortgages.

A purchase money mortgage, as its name indicates, is a mortgage given by the vendee to the vendor as part consideration for the premises. It must be executed at the same time that the deed is executed (Coke's Appeal, 23 Pa. 186). But it is not necessary that it be executed to the vendor; it may be executed to any nominee to whom the vendor has by act and deed assigned this right. This assignment need not even be formally made (for form, see Par. 222).

An ordinary mortgage becomes a lien from the time it is recorded (See Section on Recording, Par. 126) notwithstanding its date. A purchase money mortgage is an exception and becomes a lien from its date, if recorded at any time within sixty days. Therefore, if two mortgages are given for the purchase money, although recorded on different days, one cannot be prior to the other and they are equal liens. A sheriff's sale on either would divest the other (Pease v. Hoag, 11 Phila. 549). To avoid this effect, if it is intended to make one purchase money mortgage subject to another, it should recite what is called a second mortgage clause (See Par. 92, this section). Should the purchase money mortgage be executed to some third party it is good practice to take an assignment of the vendor's right to the purchase money mortgage and recite that fact in the mortgage, though this is not necessary (Commonwealth T. & T. Co. v. Ellis, 192 Pa. 321) (See for form of recital, Par. 281).

##### 89. Advance Money Mortgages.

A mortgage may be given for future advances to be made thereafter. Such mortgages are valid securities for such ad-

vances as soon as made, whether the advances be made to mortgagor or a third person designated by him. Such mortgages are known as "advance money mortgages," or mortgages for future advances. They are commonly used by builders to raise money for a building operation. Such a mortgage is, however, a prior lien as to subsequent incumbrances only from the time such advances are actually made. Unless by the terms of the mortgage an obligation is imposed upon the mortgagee to make all advances (*Dahlem's Estate*, 175 Pa. 444 (453)). In other words, unless the mortgagee actually binds himself absolutely to make the advances, the mortgage will only be a lien as to subsequent incumbrance from the time the money is actually advanced. The justice of this distinction permits of no argument. If no money is actually advanced the purchase money mortgage does not become a binding lien against the mortgagor because of the want of consideration. But if the mortgage is assigned by the mortgagee to an innocent and bona fide purchaser without notice, said mortgage becomes an absolute and valid lien against the mortgagor. Since the recording of the mortgage clothes it with an apparent validity upon which innocent third parties have a right to rely (*Johnson v. McCurdy*, 83 Pa. 282).

The form of an advance money mortgage is precisely the same as an ordinary mortgage and, indeed, it only differs from the ordinary mortgage in that the latter is given for a past or present consideration, whereas the former is given for a future consideration.

Until the recent decision of *Page v. Carr* (232 Pa. 371 1911), the Mechanics' Lien Law (Act of June 4, 1901, P. L. 431, sec. 13) gave mechanics' liens a preference over advance money mortgages as far as the newly-erected buildings or improvements were concerned. The Supreme Court, however, in the case just cited held such preference unconstitutional and void, it being in conflict with section 7, Article III of the Constitution forbidding special legislation. Mechanics' liens, therefore, are now in no better position than other subsequent liens or encumbrances, and the priority of advance money mortgages covers not only the land but the newly erected buildings and improvements as well.

**90. Equitable Mortgages.**

An equitable mortgage, says Fallon (Pennsylvania Law of Conveyancing 383), is a lien of such a nature as will be recognized in equity as a security for the payment of money and will be treated as a mortgage. Like other equitable charges it will only be enforced against the party whose action gives rise to it or those who take the land with notice of it or take the land without giving a valuable consideration therefor. Bona fide purchasers for value without notice and subsequent legal mortgagees for value will not be effected by these equitable liens. In England, an equitable mortgage can be created by merely depositing the title deeds with the mortgagee, but not in Pennsylvania nor generally anywhere in this country (*Shitz v. Dieffenbach*, 3 Pa. 233). Mere deposit of title deeds in Pennsylvania is of no avail to create any lien unless accompanied by a written instrument which must be recorded (*Edward's Exec'rs v. Trumbull*, 50 Pa. 509). In fact, the only kinds of equitable mortgages that exist in Pennsylvania are such as may be implied by a court of equity from the nature of the transaction between the parties or where on account of some informality in the execution of the instrument it cannot operate as a legal mortgage or enforced as such.

**91. First Mortgages.**

Mortgages are customarily referred to either as "first" or second, according to their priority. As the name implies, a first mortgage is a first lien upon the property incumbered. If given at the time of the execution of the deed it becomes a purchase money mortgage as set forth in the foregoing paragraph. A first mortgage is regarded as the safest and most desirable kind of investment. Trust funds are permitted by law to be invested in them.

**92. Second Mortgages. Second Mortgagee Clause.**

A second mortgage is precisely the same as a first class mortgage except that it is a second lien on the property mortgaged. It, of course, follows that it is not as good a security as a first mortgage unless there is ample margin between the aggregate amount of the mortgages and the market value of the property. Ordinarily it is not necessary to recite the fact that the mortgage is under and subject to an existing mortgage, but it is customary

to insert in the second mortgage directly after the recital a clause similar to the one in the deed form set out in Par. 53 (consult also form, Par. 261) as follows:

Under and subject nevertheless to the payment of a certain mortgage debt or principal sum of \$3,500.00 with interest thereon as the same may become due and payable.

There is, however, one very important exception to the rule just stated, and that is where the second mortgage is given by the vendee at the same time he is taking title and executing a first mortgage, the law may imply both mortgages to be purchase money mortgages, and as such equal liens if recorded at any time within sixty days after execution. To guard against this possibility the second mortgage should expressly stipulate that it is not a purchase money mortgage and is to be a second lien. The following clause is generally used for this purpose and is known as the second mortgage clause.

• "Being the same premises which Andrew Black by indenture dated the 12th day of January, A. D. 1911, and intended to be recorded, granted and conveyed to the said mortgagor in fee. *And it is hereby expressly certified and declared that it is not a purchase money mortgage and that it is subject both in lien and payment to a certain mortgage to secure the payment of (\$3500.00) given by said mortgagor to Isaac Thomas, dated January 12, A. D. 1911, and intended to be recorded; and that the lien of said mortgage shall not be affected or impaired by a judicial sale under a judgment recovered upon this present indenture or upon the bond secured hereby; but any such sale shall be expressly advertised and made subject to the lien of the said mortgage.*"

This clause is inserted as the recital in the conveyance part of the mortgage, see form Building and Loan Association Mortgage, page 123, and following the habendum is inserted this clause:

"Under and subject both in lien and payment to a certain mortgage to secure the payment of \$3,500.00 given by the mortgagor to Isaac Thomas, dated January 12th as above fully set forth."

These clauses must always be inserted in the second mortgage where title is passing and two mortgages are given. The second mortgage must then be dated and recorded subsequent to the first mortgage. It will be seen that the effect of this clause is to

expressly disavow the implication that it is a purchase money mortgage and to declare it to be subject both in lien and payment to the designated first mortgage.

### 93. Building Association Mortgages. Building Associations.

Individuals rarely care to and financial institutions will not loan money on second mortgages, hence arose the need of an institution to which a frugal man of small means could turn to borrow sufficient money to build a home or buy one. From this need developed that splendid institution of saving known as the Building Association. Pennsylvania is the home of building and loan associations, and Philadelphia county is the birthplace. The first building and loan association was organized in Frankford, Philadelphia county, now part of the city, in 1831. They have since spread all over the country and have developed differently in different states. However, the Pennsylvania plan is still regarded as the more conservative and successful and will here be briefly explained.

The fundamental principle upon which this institution rests is co-operation. It was designed to meet the needs of men whose savings were too small to be put to any substantial use alone. But by combining the savings of a number of persons into into an association these small individual savings formed an effective bulk sufficient to purchase a home for one member, then another and so on until the object for which the association was formed was accomplished. In the beginning these associations actually purchased the land and then erected houses which were divided among the members. Later, this practice fell into disuse and the members bought their own land and built thereon a house, borrowing the money from the association and securing the association by a mortgage. Nowadays, when property is built so much more cheaply by an operating builder, the building associations mostly confine themselves to the loaning of money on mortgages to enable the member to purchase a house. But the fundamental purpose remains the same, to wit: the aiding of men of small means to become home owners.

According to the Pennsylvania plan, the building association is a corporation capitalized at usually one million (\$1,000,000.00) dollars, which is divided into 5,000 shares of \$200.00 each. These shares are paid in on installments of one dollar per month per share and the money so received is loaned out to the various

members at 6 per cent. interest. The payment of these dues or installments are continued until the amount of the installments paid in, together with the earnings of the association, equals \$200.00 per share. The stock is then said to have matured and the amount of \$200.00 per share is then credited to the shareholders by being paid in cash to those shareholders who have not borrowed from the association and by cancelling the debt and satisfying the mortgage of those who have. The time in which the stock of a building and loan association will mature depends, of course, upon the economy with which the society is conducted, the security of loans and the absence of losses. The salaries are generally very small and only the secretary and treasurer receive salaries out of the association funds. A conservatively managed association should mature its stock in twelve years, *i. e.*, after 144 installments of \$1.00 per share have been paid in. The balance between the amount so paid in, *viz*: \$144.00 and \$200.00, to wit: \$56.00, represents the accumulated earnings of the association during the twelve years; this is at the rate of about 6 per cent. compounded. Some associations have matured their stock in nine, ten and eleven years and the earnings in such cases are proportionately larger.

The loans of building associations are made in the following manner: Application is made for a loan on a mortgage against the premises set forth (see Form of Application, page 119). The premises are examined by a visiting committee, who report to the board of directors. If the board approves the loan, it is granted. Should more than one application be approved and there is not enough money in the treasury to cover all, the applicants may bid for the preference of receiving the loan by offering to pay a premium of 5, 10 or 15 per cent. in addition to the usual interest. Thus a person borrowing \$1,000.00 would have to pay interest at the rate of \$6 per cent., or \$60.00, or \$5.00 per month; a premium of 10 per cent. bid would require him to pay \$5.50 per month instead of \$5.00; 15 per cent., \$5.75, etc. In some associations the whole premium is deducted at the beginning. These premiums, while in the nature of usurious interest are expressly permitted and declared legal by law; but they must result from competitive bidding, otherwise they are usurious and may be recovered back (*Stiles' Appeal*, 95 Pa. 122). A by-law stipulating a fixed premium is illegal (*Land Title & Trust Co. v.*



Fulmer, 24 Pa. S. C. 265; see also *Roeser v. German Nat. B. & L. Assn.*, 32 Pa. S. C. 100).

FORM OF BUILDING AND LOAN ASSOCIATION APPLICATION.\*

PHILADELPHIA, *Oct. 1, 1912.*

To the President and Directors of the

X. Y. BUILDING AND LOAN ASSOCIATION.

Application is hereby made for a loan of \$800.00, to be secured by the assignment of *four* shares of the stock of this association and by a second mortgage for \$800.00, subject to all rules, regulations, constitution and by-laws of said association, upon property consisting of a lot of ground situate 525 "*F*" Street, in the *Fiftieth* Ward of the City of Philadelphia.

The size thereof is 16 feet 3 inches front, by 65 feet deep.

On which is erected a *two-story brick dwelling*.

The size of which is 16 feet by 45 feet.

How occupied? *By owner.*

If rented, what rent? \$20.00.

Value, \$3,000.00. Purchase price, \$3,000.00.

Assessed value, \$2,800.00.

What fire insurance, and where? *Satisfactory.*

Is title insured and where? *Satisfactory.*

Name of mortgagor, *Allen Green.*

Name of present owner, *Allen Green.*

What incumbrance against the property? *First mortgage, \$1,200.00.*

How long have buildings been completed? *Two years.*

What repairs have been made within 6 months? *None.*

What street improvements within 6 months? *None.*

By whom is property occupied? *Owner.*

Remarks,

A committee fee of \$1.50 accompanies this application.

Address,

*Allen Green,  
525 "F" Street.*

94. Building Association Mortgages (Continued). Forms.

A building association mortgage differs from an ordinary straight mortgage in that they are given to secure the monthly payments of dues, interest, etc., for such length of time as may be required for the stock to mature. Mr. Justice Fell, of the

\*This is the regular printed form of application. The words in italics show how it is to be filled in. Most building and loan associations have their own forms, which the secretary or solicitor will supply upon application.

Pennsylvania Supreme Court, says (*Freemansburg B. & L. Ass'n v. Watts*, 199 Pa. 221): "In carrying out the plan on which building associations are organized and conducted, it is not intended or required that a stockholder who borrows from the association will discharge the debt he incurs by direct payments on account of it. He pays at stated periods dues on his stock, the interest on the money borrowed and when the premium bid for the loan has not been deducted, the installments on it. When by the receipt of dues, interest, premium and fines for non-payment of dues, all the stock of the association or of the series to which the borrowed stock belongs becomes full paid or matured, the value of his stock equals the amount of his debt, and the transaction is ended by the surrender of the stock by him and the cancellation of his obligation to the association." By consulting the form of a building and loan association and bond and warrant the explanation of the transaction by Justice Fell becomes exceedingly simple to understand. The borrower may borrow \$200.00 for each share of stock he holds. Thus, to borrow \$1,000.00 he must have five shares of stock, so that at maturity the amount of his stock equals the loan. The stock so subscribed for is assigned as collateral security, together with a mortgage on the property to the association.

These mortgages are usually made out for one year but this is a mere form and they cannot be foreclosed at the expiration of one year or at any time before maturity of the stock unless the borrower is more than six months in the arrears in the payments of his dues, interest, &c. (Act of April 10, 1879, P. L. 16, Sec. 5).<sup>\*</sup> But while the association cannot compel the repayment of the principal sum loaned to a borrower who keep in good standing, the borrower has the privilege at any time of paying off the

<sup>\*</sup>The only decision on this exact point is *Mt. Vernon Building and Loan Association v. Brown et al.*, an unreported case decided by C. P. 1 Philadelphia County, as of Dec. Term 1909, No. 2723, in which the court, in discharging the plaintiff's rule for judgment for want of a sufficient affidavit of defence, filed the following brief opinion, to wit: "We think that the language of the mortgage indicated it was to run for more than one year. Rule discharged." The mortgage in question contained the same provision as to the time of payment of the principal as appears in the usual form of B. & L. Ass'n mortgages (see form, page 121) viz: "at any time within one year from the date thereof." See also on this point the communication of Geo. A. Drovin, Esq., published in 67 Leg. Intell. 672. Also the suggestions of Arthur Boswell, 68 Leg. Intell. 20.

whole loan and receiving back his stock pledged as collateral (*Wrenn v. Southwark Bldg. & Loan Assn.*, 20 D. R. 625).

Building association mortgages may be either first or second. Some associations only lend on first mortgages. Such associations forget the purposes for which they are formed, viz. to assist small borrowers. Nor is their position very logical for there is little difference between loaning \$4,000.00 on one mortgage and loaning a second mortgage of \$1,000.00 above a first mortgage of \$3,000.00; the total amount of the incumbrance is the same. But in the latter case the association has reduced the expenses of the borrower by permitting him to borrow a straight mortgage at five or five and four-tenths per cent. on \$3,000.00 so lightening his burden. At the same time the association is enabled to assist four stockholders where the other association only assists one and in addition avoids the very just criticism of "not having all its eggs in one basket." The majority of the associations therefore will loan on second mortgages. The form here given is a second mortgage. It differs only from a building and loan association first mortgage in that it has an under and subject clause after the recital and in the "habendum." Remember, however, if it be given at the time the borrower takes title and executes a first mortgage, a second mortgagee clause must be inserted as set forth in paragraph 92, else it may be regarded as a purchase money mortgage and equal in lien with the first mortgage.

### Building and Loan Association Mortgage.

THIS INDENTURE, made the *third* day of *January*, in the year of our Lord *one thousand nine hundred and twelve (1912)*, between *John Smith, gentleman, of the City of Philadelphia, State of Pennsylvania*, of the one part (mortgagor), and the *X. Y. Z. Building and Loan Association* of the other part (hereinafter called the mortgagee).

WHEREAS, the said mortgagor, in and by a certain obligation or writing, obligatory under *his* hand and seal duly executed, bearing even date herewith, stands bound unto the said mortgagee in the sum of *twelve hundred (\$1,200.00 dollars)*, lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of the said obligation, a policy or policies of fire insurance in good and approved company or companies, duly assigned as collateral security to the mortgagee or its successors or assigns, to an amount not less than *six hundred (\$600.00) dollars*, upon the

buildings on the premises hereinafter described, and conditioned for the payment of the just sum of *six hundred (\$600.00)* dollars, at any time within one year from the date thereof, together with interest thereon for the same, in like money, payable monthly, at the rate of *six (6%)* per cent. per annum, and together with all fines imposed by the constitution and by-laws of the aforesaid association, on the *second Monday* of each and every month thereafter, and should also well and truly pay, or cause to be paid unto the said mortgagee, its successors and assigns, the sum of three (*\$3.00*) dollars, on the said *second Monday* of each and every month thereafter, as and for the monthly contribution on *three (3)* shares of the capital stock of the said mortgagee, now owned by the said mortgagor without any fraud or further delay; and for the delivery to the said mortgagee, its successors or assigns, on or before the first day of *September* of each and every year, receipts for all water rent and taxes of the current year assessed upon the hereinafter described premises. PROVIDED, HOWEVER, and it is thereby expressly agreed, that if at any time default should be made in the payment of the said principal money when due, or of the said interest, or of the said fines, or the monthly contribution on said stock, for the space of six months after any payment thereof should fall due, or in the prompt and punctual maintenance of said fire insurance so assigned as aforesaid, or in such delivery to the said mortgagee, its successors or assigns, on or before the first day of *September* of each and every year, of such receipts for such water rent and taxes of the current year upon the premises mortgaged, or if the said mortgagor should not well and truly pay, or cause to be paid, the interest upon the first mortgage, and the ground rent, if such there be, the water rent and other municipal claims and taxes, on the hereinafter described premises, when the same should become due and payable, and also should not well and truly pay, or cause to be paid, all and every such sum or sums as should thereafter be assessed by any public authority upon the said principal debt or sum, or upon the interest thereof, then and in such case the whole principal debt aforesaid should, at the option of the said mortgagee, its successors and assigns, immediately thereupon become due, payable and recoverable, and payment of said principal sum, and all interest, and all fines thereon, as well as any contribution on said *three (3)* shares of stock then due, may be enforced and recovered at once, any thing thereinbefore contained to the contrary thereof notwithstanding. And it was therein further agreed, that if the same or any part thereof has to be collected by proceedings at law, then an attorney's collection fee of *five* per cent. should be added to the amount so collected as a part of the costs of such proceedings. And the said mortgagor for *himself*, *his* heirs, executors, administrators and assigns, thereby expressly waived and relinquished unto the said mortgagee, its

successors and assigns, all benefit that might accrue to him or them by virtue of any and every law made or to be made exempting the premises hereinafter described, or of any other premises or property whatever, from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys thereby secured, or any part thereof, and the cost of such action and execution, as in and by the said above recited obligation and the condition thereof, relation being thereunto had may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH, That the said mortgagor as well for and in consideration of the premises, as of the aforesaid debt or principal sum of *six hundred* (\$600.00) dollars, and for the better securing the payment of the same, with interest, together with all fines, and together with the monthly contribution of *three* (\$3.00) dollars, on the said *three* (3) shares of stock owned by the said *John Smith*, mortgagor, unto the said mortgagee, its successors and assigns, in discharge of the said above recited obligation as of the further sum of one dollar, lawful money, unto *him* in hand well and truly paid by the said mortgagee, at the time of the execution hereof, the receipt whereof is hereby acknowledged, *hath* granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents *doth* grant, bargain, sell, alien, enfeoff, release and confirm unto the said mortgagee, its successors and assigns, *all that certain lot or piece of ground with messuage or tenement thereon erected, situate on the west side of "Y" Street, at a distance of three hundred and thirty-seven (337') feet northward from the north side of "X" Street, in the Fiftieth Ward of the City of Philadelphia, containing in front or breadth on the said "Y" Street, eighteen (18') and extending of that width in length or depth westward between two parallel lines at right angles with the said "Y" Street one hundred feet to a certain three feet wide alley, extending northward from "X" Street to "Z" Street. Being the same premises which Andrew Brown and Wife, by Indenture bearing date the fifth day of July, A. D. 1911, and recorded in the Office for the Recording of Deeds in and for the County of Philadelphia, in Deed Book W. S. V., No. 1196, Page 213, etc., granted and conveyed unto the said John Smith in fee.*

(And It Is Hereby expressly certified and declared that this is not a purchase money mortgage and that it is subject both in lien and payment to a certain Mortgage to secure the payment of *Thirty-five Hundred* (\$3500.00) Dollars given by the said Mortgagor to *Richard Black* dated the second day of January, A. D. 1912 and intended to be recorded; and that the lien of the said Mortgage shall not be affected or impaired by a judicial sale under a judgment recovered upon this present Indenture or upon the Bond secured hereby; but any such sale shall be expressly advertised and made subject to the lien of the said Mortgage.)

*Together with the free and common use, right, liberty and privilege of the aforesaid alley, as and for a passage way and water course at all times, hereafter, forever. And,*

TOGETHER with all and singular the Buildings, Streets, Alleys, Passages, Ways, Waters, Water-Courses, Rights, Liberties, Privileges, Improvements, Hereditaments and Appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof.

TO HAVE AND TO HOLD the said *lot or piece of ground with the Messuage or Tenement thereon erected*, Hereditaments and Premises hereby granted, or mentioned and intended so to be, with the Appurtenances, unto the said Mortgagee, its Successors and Assigns, to and for the only proper use and behoof of the said Mortgagee, its Successors and Assigns, forever. *Under and Subject both in lien and payment to a certain Mortgage to secure the payment of \$3500.00 given by the Mortgagor to Richard Black, dated the 2nd day of January, 1912 as above fully set forth.*

PROVIDED ALWAYS, nevertheless, that if the said Mortgagor *his* Heirs, Executors, Administrators or Assigns, do and shall well and truly pay, or cause to be paid, unto the said Mortgagee, its Successors or Assigns, the aforesaid debt or principal sum of *Six hundred (\$600.00) Dollars*, together with interest thereon, and together with the fines aforesaid, on the days and times hereinbefore mentioned and appointed for payment of the same; and shall also well and truly pay, or cause to be paid, to the said Mortgagee, its Successors or Assigns, the above mentioned sum of *Three (\$3.00) Dollars*, on the *second Monday* of every month, as and for the contribution on the said *Three (3) Shares* of Stock as above mentioned; and shall, on or before the First day of *September* of each and every year, deliver to the said Mortgagee, its Successors or Assigns, receipts for all water rent and taxes of the current year assessed upon the mortgaged premises, and shall keep and maintain said fire insurance so assigned as aforesaid, according to the condition of the said above recited Obligation without any fraud or further delay, and without any deduction, defalcation or abatement to be made of any thing, for or in respect of any taxes, charges or assessments whatsoever, that then, and from thenceforth, as well this present Indenture, and the Estate hereby granted, as the said above recited Obligation shall cease, determine and become void, any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding. Provided further, in case of default in the payment of the principal, interest or fines as aforesaid, or any part thereof, or in default of the payment of the monthly contribution on the said *Three (3) Shares* of Stock, as above particularly recited and mentioned, or any part thereof, for the space of six months after any payment thereof shall fall due, or in the prompt and punctual maintenance of said fire insurance so assigned as aforesaid, or in

such delivery to the said Mortgagee, its Successors or Assigns, on or before the First day of *September* of each and every year, of such receipts for such water rent and taxes of the current year assessed upon the mortgaged premises, or if the said Mortgagor shall not well and truly pay, or cause to be paid, the interest upon the first mortgage, and the ground rent, if such there be, the water rent and other municipal claims and taxes, on the above described premises, when the same shall become due and payable, and also shall not well and truly pay, or cause to be paid, all and every such sum or sums as shall hereafter be assessed by any public authority upon the said principal debt or sum, or upon the interest thereof, then and in such case the whole principal debt aforesaid shall immediately thereupon become due, payable and recoverable; and it shall and may be lawful for the said Mortgagee, its Successors or Assigns, to sue out forthwith a writ of Scire Facias upon this present Indenture of Mortgage, and to proceed at once thereon to recover the principal money hereby secured, and all interest, and all fines thereon, as well as any contribution on said *Three (3)* Shares of Stock then due, according to law, without further stay, any law or usage to the contrary notwithstanding. And it is hereby agreed, that in case the same or any part thereof has to be collected by process of law, that an attorney's fee of Five per cent. shall be added to and collected as a part of the costs of such proceedings. And the said Mortgagor for *himself, his* Heirs, Executors, Administrators and Assigns, hereby waive and relinquish unto the said Mortgagee, its Successors and Assigns, all benefit that may accrue to *him or them* by virtue of any and every law made or to be made to exempt the said above described premises or any other property whatever *either* from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys hereby secured, or any part thereof.

In Witness Whereof, the said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

Sealed and delivered in the  
presence of us:

*Robert Roe,*  
*John Doe.*

*John Smith.*      (Seal.)

On the *3rd* day of *January* A. D. *1912*, before me, a *Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia* personally appeared the above named *John Smith* and in due form of law acknowledged the above or foregoing Indenture of Mortgage to *his* act and deed, and desired the same might be recorded as such.

Witness my hand and *Notarial* seal the day and year aforesaid.

Robert Roe,  
*Notary Public.*

*Commission expires at the end of next session of Senate.*

### Form of Building Association Bond and Warrant.

KNOW ALL MEN BY THESE PRESENTS, That *I. John Smith, of the City of Philadelphia, State of Pennsylvania, Gentleman,* (hereinafter called the Obligor), am held and firmly bound unto *The XYZ Building and Loan Association* (hereinafter called the Obligee), in the sum of *Twelve hundred (\$1200.00)* Dollars, lawful money of the United States of America, to be paid to the said Obligee, its certain Attorney, Successors or Assigns: To which payment, well and truly to be made, *I do bind myself, my Heirs, Executors and Administrators, and every of them, firmly by these Presents. Sealed with my Seal. Dated the 3rd day of January in the year of our Lord one thousand nine hundred and twelve (1912).*

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above-bounden Obligor *his* Heirs, Executors and Administrators, or any of them, shall and do well and truly keep and maintain at all times, until the full discharge of this Obligation, a policy or policies of Fire insurance in good and approved company or companies, duly assigned as collateral security to the Obligee or its Successors or Assigns, to an amount not less than *Six Hundred (\$600.00)* Dollars, upon the buildings on the premises mortgaged by the Mortgage securing this Obligation, and shall and do well and truly pay, or cause to be paid unto the above-named Obligee, its certain Attorney, Successors or Assigns, the just sum of *Six Hundred (\$600.00)* Dollars, as aforesaid, at any time within One year from the date hereof, together with interest thereon, for the same, in like money, at the rate of *six (6)* per cent. per annum, and together with all fines imposed by the Constitution and By-laws of the aforesaid Association, payable monthly on the *second Monday* of each and every month hereafter, and shall also well and truly pay, or cause to be paid unto the said Obligee, its Successors or Assigns, the sum of *Three (\$3.00)* Dollars, and the said *second Monday* of each and every month hereafter, as and for the monthly contribution on *Three (3)* Shares of the Capital Stock of the said Obligee, now owned by the said Obligor, without any fraud or further delay; and shall also deliver to the said Obligee, its Successors or Assigns, on or before the *First day of September* of each and every year, receipts for all water rent and taxes of the current year assessed upon the premises described in the accompanying Indenture of Mortgage. Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of the



said principal money when due, or of the said interest, or of the said fines, or the monthly contribution on said Stock, for the space of six months after any payment thereof shall fall due, or in the prompt and punctual maintenance of said fire insurance so assigned as aforesaid, or in such delivery to the said Obligee, its Successors or Assigns, on or before the First day of *September* of each and every year, of such receipts for such water rent and taxes of the current year upon the premises mortgaged; or if the said Obligor shall not well and truly pay, or cause to be paid, the interest upon the first mortgage and the ground rent, if such there be, the water rent and other municipal claims and taxes, on the premises particularly described in the Mortgage accompanying this Obligation, when the same shall become due and payable, and also shall not well and truly pay, or cause to be paid, all and every such sum or sums as shall hereafter be assessed by any public authority upon the said principal debt or sum, or upon the interest thereof, then and in such case the whole principal debt aforesaid shall, at the option of the said Obligee, its Successors and Assigns, immediately thereupon become due, payable and recoverable, and payment of said principal sum, and all interest, and all fines thereon, as well as any contribution on said *Three (3) Shares of Stock*, then due, may be enforced and recovered at once, any thing hereinbefore contained to the contrary thereof notwithstanding. And it is hereby further agreed, that if the same, or any part thereof, has to be collected by process at law, that an attorney's fee of *Five per cent.* shall be added to and collected as a part of the costs of such proceedings. And the said Obligor for *himself, his Heirs, Executors, Administrators* and Assigns, hereby expressly waives and relinquishes unto the said Obligee, its Successors and Assigns, all benefit that may accrue to *him or them* by virtue of any and every law, made or to be made, to exempt the premises described in the Indenture of Mortgage herewith given, or of any other premises or property whatever, *either* from levy and the sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys hereby secured, or any part thereof, and the cost of such action and execution, then the above Obligation to be void, or else to be and remain in full force and virtue.

Sealed and delivered in the  
presence of us:

*Robert Roe,*  
*John Doe.*

*John Smith.* (Seal.)

To *Allen Jones, Esq.*, Attorney of the Court of Common Pleas, at *Philadelphia* in the County of *Philadelphia* in the State of *Pennsylvania* or to any other Attorney, or to the Prothonotary of the said Court, or of any other Court, there or elsewhere.

WHEREAS, *I, John Smith of the City of Philadelphia, State of Pennsylvania*, (hereinafter called the Obligor), in and by a certain Obligation, bearing even date herewith, do stand bound unto *The XYZ Building and Loan Association*, hereinafter called the Obligee), in the sum of *Twelve Hundred (\$1200)* Dollars, lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of this Obligation, a policy or policies of Fire insurance in good and approved company or companies, duly assigned as collateral to the Obligee or its Successors or Assigns, to an amount not less than *Six hundred (\$600.00)* Dollars, upon the buildings on the premises mortgaged by the Mortgage securing this Obligation, and conditioned for the payment of the just sum of *Six hundred (\$600.00)* Dollars, as aforesaid, at any time within One year from the date thereof, together with interest thereon, for the same, in like money, at the rate of *six (6)* per cent. per annum, and together with all fines imposed by the Constitution and By-Laws of the aforesaid Association, payable monthly, on the *second Monday* of each and every month thereafter, and should also well and truly pay, or cause to be paid unto the said Obligee, its Successors or Assigns, the sum of *Three (\$3.00)* Dollars, on the said *second Monday* of each and every month thereafter, as and for the monthly contribution on *Three (3)* Shares of the Capital Stock of the said Obligee, now owned by the said Obligor without any fraud or further delay; and should also well and truly pay, or cause to be paid, all and every such sum or sums as should thereafter be assessed by any public authority upon the said principal debt or sum, or upon the interest thereof; and should also deliver to the said Obligee, its Successors or Assigns, on or before the First day of *September* of each and every year, receipts for all water rent and taxes of the current year assessed upon the premises described in the Mortgage accompanying said Obligation. Provided, however, and it is thereby expressly agreed, that if at any time default should be made in the payment of the said principal money when due, or of the said interest, or of the said fines, or the monthly contribution on said Stock for the space of six months after any payment thereof should fall due, or in the keeping and maintaining at all times fire insurance so assigned as aforesaid, or in the delivery to the said Obligee, its Successors or Assigns, on or before the First day of *September* of each and every year, of such receipts for such water rent and taxes of the current year assessed upon the mortgaged premises, or if the said Obligor shall not well and truly pay, or cause to be paid, the interest upon the first mortgage and the ground rent, if such there be, the water rent and other municipal claims and taxes, on the premises particularly described in the Mortgage accompanying this Obligation, when the same shall become due and payable, and also shall not well and truly pay, or cause to be paid, all and every such sum or sums as should thereafter be

assessed by any public authority upon the said principal debt or sum, or upon the interest thereof, then and in such case the whole principal debt aforesaid should, at the option of the said Obligee, its Successors and Assigns, immediately thereupon become due, payable and recoverable, and payment of said principal sum, and all interest, and all fines thereon, as well as any contribution on said *Three (3)* Shares of Stock, then due, might be enforced and recovered at once, any thing thereinbefore contained to the contrary thereof notwithstanding. And it is thereby further agreed, that if the same, or any part thereof, has to be collected by process of law, then an attorney's fee of Five per cent. should be added to the amount so collected, as a part of the costs of such proceedings. And the said Obligor for *himself, his* Heirs, Executors, Administrators and Assigns, thereby expressly waived and relinquished unto the said Obligee, its Successors and Assigns, all benefit that might accrue to him or them by virtue of any and every law, made or to be made, to exempt the premises described in the Indenture of Mortgage therewith given, or of any other premises or property whatever, *either* from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys thereby secured, or any part thereof:—These are to desire and authorize you, or any of you, to appear for *me, my* Heirs, Executors or Administrators, in the said Court or elsewhere, in an appropriate form of action, there or elsewhere brought or to be brought against *me, my* Heirs, Executors or Administrators, at the suit of the said Obligee, its Successors or Assigns, on the said Obligation, as of any Term or Time past, present, or any other subsequent Term or Time there or elsewhere to be held, and confess or enter Judgment thereupon against *me, my* Heirs, Executors or Administrators, for the sum of *Twelve hundred (\$1200.00)* Dollars, lawful money of the United States of America, Debt, besides costs of suit, by non sum informatum nihil dicit, or otherwise, as to you shall seem meet; and for your or any of your so doing this shall be your sufficient warrant. And I do hereby, for *myself, my* Heirs, Executors and Administrators, remise, release and forever quit claim unto the said Obligee, its certain Attorney, Successors and Assigns, all and all manner of Error and Errors, Misprisions, Misentries, Defects and Imperfections whatever, in the entering of the said Judgment, or any Process or Proceedings thereon or thereto, or anywise touching or concerning the same.

In Witness Whereof, *I* have hereunto set my hand and seal the *3rd* day of *January* in the year of our Lord one thousand nine hundred and *twelve (1912)*.

Sealed and delivered in the  
presence of us:

*Robert Roe,*  
*John Doe.*

*John Smith.*      (Seal.)

**95. Leasehold Mortgages.**

We have seen that in general any freehold estate (see Par. 3), of land may be mortgaged; so also may a leasehold interest be mortgaged. This is an important advantage where the lease is for a long term of years. Under Act of April 27th, 1855, P. L. 368, Sec. 8, every lessee for a term of years may mortgage his lease with all buildings, fixtures and machinery thereon with the same effect as in case of freehold interest. But the mortgage must be acknowledged and recorded with the lease or a copy thereof (*Ladley v. Creighton*, 70 Pa. 490). (See form par. 262.) Such mortgage, however, does not affect the landlord's rights, priority or remedy for rent. As the right to mortgage leaseholds is a statutory right it is strictly construed, so that where a lease and a mortgage of said lease are duly recorded and both expire on a date named and the lease is extended after the expiration of the original term but the extension of lease is not recorded, the lien of the mortgage is not extended but is lost on the date when the lease had expired, and this applies not only to the lien on the lease, but as to the lien on the fixtures and machinery belonging to the lessee which are considered appurtenant to the lease *Stock v. German Press Co.*, 230 Pa. 127).

**96. Recording of Mortgages.**

The Pennsylvania recording system and laws will be considered in a separate chapter hereinafter (Chapter VIII, Page 158) but it is necessary to remember that unlike a deed the mortgage takes priority from the time it is recorded and not from its date. That is, the mortgage first recorded is first lien notwithstanding a prior mortgage has been executed before but not recorded until thereafter. The only exception to this rule is the purchase money mortgage which takes effect from the date of the mortgage if recorded at any time within sixty days thereof. But Mr. Fallon (*Pa. Law Conveyancing by Christopher Fallon, Esq.*, Page 402), doubted whether in Philadelphia county by reason of the Act of May 25th, 1878, P. L. 151, even purchase money mortgages are not required to be recorded at once like any other mortgage. To be safe therefore the immediate recording of all mortgages is recommended. The neglect to record however does not defeat the mortgage as to the mortgagor but merely suspends its lien as to any bona fide mortgagee or purchaser of the property without notice of its existence. A mortgage unrecorded in the lifetime of

the mortgagor gains no lien by being recorded afterwards. It ranks merely as a debt under seal of the decedent (Nice Appeal, 54 Pa. 200).

## SECTION IV.

## DISCHARGE OF MORTGAGES.

**97. By Payment and Satisfaction of Record.**

A mortgage paid and satisfied of record is of course discharged. The recorder of deeds will not satisfy the record of a mortgage unless the original instrument is produced. Should the original mortgage be lost, mislaid or destroyed, appropriate proceedings are provided by the Act of June 8, 1911, P. L. 717, whereby on petition to the court, &c., satisfaction will be ordered or whatever relief is necessary, granted.

Payment may be either actual or presumed. A mortgage is presumed paid off if no payment has been made either on account of principal or interest for twenty years, but it remains a lien unless satisfied by court proceedings as explained in paragraph 98 of this section.

Actual payment of mortgage principal cannot be made by the mortgagor, except in building association mortgages until due. But the mortgagee may waive his right to refuse to receive it until due. So also the mortgagee cannot require payment until due. When payment of principal is due, depends upon the wording of the mortgage. A mortgage payable within a certain time may be paid off at any time; so a mortgage payable within a year from date can be paid off at any time during the year (*Patterson v. Judge*, 17 W. N. C. 127; *Horstman v. Gerker*, 49 Pa. 282). Therefore in filling in the printed form of mortgages insert the words "payable at the expiration of . . . . . years from the date thereof." Payment to discharge a mortgage should be made to the mortgagee and such payment to him will discharge the mortgage even though assigned by him unless the assignee shall have given notice of the assignment to the mortgagor. Mere recording of the assignment is not sufficient notice (*Foster v. Carson*, 159 Pa. 477). Where a dispute arises as to who the proper party is, entitled to receive the principal of the mortgage, the mortgagor may protect himself by petitioning the court for leave to pay the principal into court. The court will then decide the question of the rights of the disputants and award the money so paid into court to the one legally entitled.

**98. By Order of Court in Proceedings to Satisfy Mortgage Presumed Paid.**

Wherever a mortgage has been paid and the holder thereof had died (Acts of March 31, 1823, 8 Sm. L. 131, Sec. 1), or has not satisfied it proceedings in court may be taken to compel satisfaction (Act of June 22, 1897, P. L. 181).

By Act of June 10, 1881, P. L. 97, Sec. 1, proceedings are provided wherein a mortgage may be satisfied by the court where no payment on the principal or interest has been made for twenty years. Such a lapse of time raises a presumption of payment of the mortgage and the court is empowered upon petition duly filed to make an order to satisfy such mortgage of record.

Where a mortgage has been paid but never satisfied, the Act of June 11, 1879, P. L. 141, Sec. 1, provides for proceedings whereby satisfaction may be had even though the mortgagee cannot be found. The same act provides a like remedy where the mortgagee was a corporation whose existence has been terminated or become doubtful.

**99. Discharge of Mortgage by Release. Form.**

Where a mortgage covers but one property and it is desired to release the lien against that property, the simplest way to do it is of course by satisfaction of the record. But it sometimes happens that one mortgage is drawn to cover several properties and it is desired by the parties to relieve one property from the lien without relieving the rest. This is accomplished by an instrument called a "Release of Mortgage." A release of mortgage is an instrument in writing duly executed by the mortgagee and acknowledged, though not necessarily under seal, agreeing not to collect the mortgage debt by a sale of the portion of the premises released (*Wentz v. DeHaven*, 1 S. & R. 312). The release should be recorded in order to clear the title of the released premises. The form of a release is as follows:—

**Release of Mortgage.\***

TO ALL TO WHOM THESE PRESENTS SHALL COME, *Herman T. Edwards* sends Greeting:

\*This is the regular printed form, which can be bought at any law blank stationer. The words in italics are to be filled in by the conveyancer. The same form may be used for a corporation, except that words "its successors" should be substituted for the words "heirs, executors, administrators."

WHEREAS, *Frederick H. Lambert* by Indenture of Mortgage bearing date the *Tenth* day of *January* Anno Domini *1907*, and Recorded in the Office for Recording of Deeds in and for the *City and County of Philadelphia* in Mortgage Book *W. S. V. No. 1036* page *243*, &c., granted and conveyed unto *Jacob E. Richmond, his heirs, executors, administrators* and Assigns, the premises therein particularly described, to secure the payment of a certain debt or principal sum of *Five thousand (\$5,000.00)* Dollars lawful money, etc., with interest, as therein mentioned.

*And Whereas the said Herman T. Edwards is the present holder of said Mortgage by Assignment by Jacob E. Richmond dated March 3rd, 1908 and recorded in Assignment of Mortgage Book, No. 314, Page 300, &c.*

AND WHEREAS, the said *Frederick H. Lambert* has requested the said *Herman T. Edwards* to release the Premises hereinafter described, being part of said Mortgaged Premises, from the lien and operation of the said Mortgage:

NOW THEREFORE KNOW YE, that *I* the said *Herman T. Edwards*, as well in consideration of the premises as of the sum of *Twenty-five Hundred (\$2500.00)* Dollars lawful money, to me in hand paid by the said *Frederick H. Lambert* at the time of the execution hereof, the receipt whereof is hereby acknowledged, Have remised, released, quit-claimed, exonerated and discharged, and by these presents, Do remise, release, quit-claim, exonerate and discharge unto the said *Frederick H. Lambert, his heirs, executors, administrators* and Assigns, All that certain lot or piece of ground with the Messuage or Tenement thereon erected, Situate on the South side of "*C*" Street at a distance of Sixty-five Feet North from the North side of "*F*" Street in the Fiftieth Ward of the City of Philadelphia, Containing in front or breadth on said "*C*" Street, Sixteen feet and extending of that width in length or depth Southward between lines parallel with "*F*" Street Eighty-five feet to a three feet wide alley.

To hold the same, with the Appurtenances unto the said *Frederick H. Lambert, his heirs, executors, administrators* and Assigns, forever freed, exonerated and discharged of and from the lien of said Mortgage, and every part thereof.

Provided, always, nevertheless, that nothing herein contained shall in anywise affect, alter or diminish the lien or encumbrance of the aforesaid Mortgage on the remaining part of said Mortgaged Premises, or the remedies at law for recovering thereout or against the said *Frederick H. Lambert, his heirs, executors, administrators* or Assigns, the balance of the principal sum, with interest, secured by said Mortgage.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals this *Twenty-third* day of *November*, A. D. *1908*.

Sealed and delivered in the  
presence of us:

*John Doe,*

*Richard Roe.*

*Herman T. Edwards. (Seal.)*

On the *Twenty-third* day of *November* Anno Domini 1908, before me, the *Subscriber*, a *Notary Public* in for the *State of Pennsylvania* residing in *Philadelphia* personally appeared the above-named *Herman T. Edwards* and in due form of law acknowledged the above Release of Mortgage to be *his* act and deed, and desired the same might be recorded as such.

Witness my hand and *Notarial* seal the day and year aforesaid.

*Richard Roe, (Seal.)*

*Notary Public.*

It must be remembered that a mortgagee is not bound to release any part of the mortgage premises without the payment of the entire principal (*Home Bldg. Ass'n. v. Troth*, 3 Del. Co. 169). In other words, if a mortgage of \$1,000.00 covers two properties the mortgagor cannot tender \$500.00 and demand the release of one property. The giving of a release is always an act of accommodation on the part of a mortgagee and may or may not be for a consideration. But release taken from a trustee should always be for a valuable consideration lest the trustee be exceeding his trust powers in giving the release in which event the release would be void as to the *cestui que trust*. Sometimes there is given what is called a blanket mortgage or a mortgage which covers a large tract of land consisting of a number of separate lots. If an agreement be made at the time this mortgage is made that the mortgagee will release from time to time separate lots from the lien of his mortgage, as sold, upon the receipt of the proportionate share of his mortgage such an agreement is binding and the mortgagor can compel the release of the lien of the mortgage from the lots sold upon tender of the proportionate share of the mortgage. But unless such agreement is made the mortgagor cannot compel the mortgagee to release any part without tender of the whole mortgage debt.

There is one other matter of importance to remember in releasing a portion of premises from lien of a mortgage and that is that if a mortgagor sells a portion of the mortgaged premises without obtaining a release and thereafter sells another portion sufficient in value to pay off the whole mortgage for which he does obtain a release of mortgage, this last release operates to discharge and release the first portion sold (*Shrack v. Schriner*,



100 Pa. 451; *Meigs v. Tunnichliff*, 214 Pa. 495). This because when pieces of land subject to a common encumbrance are sold successively by the owner, they are liable to incumbrance in the inverse order of their alienation (*Turner v. Flennikin*, 164 Pa. 469). That is the holder of the encumbrance must first collect his debt from the part remaining and if not sufficient he may pursue the part last sold then that prior and so on so that the portion sold first must be collected from last.

#### 100. Discharge by Judicial Sale.

The final method of discharge by a mortgage is by a judicial sale on the instrument itself or on some lien prior thereto. If the property be sold at a sheriff's sale on the mortgage or accompanying bond whether for interest or principal it will discharge the mortgage (*Stoners Appeal*, 20 W. N. C. 375). That is the purchaser at the sheriff sale gets a clear title and the holder of the mortgage gets the amount of his mortgage debt with interest due out of the proceeds of the sale. It is not the province of this book to enter into a full discussion of the discharge of liens by judicial sale since that subject requires a treatise in itself, but a few general rules will be noted. First, judicial sales are generally of two kinds, those arising by issuing a writ of execution upon a judgment obtained on the lien, and a sale by the sheriff which class may therefore be termed sheriff sales. And second, those taking place on an order of a court in proceedings begun to sell the land for some legal purpose (such as an Orphans' Court sale to pay debts or partition proceedings to divide land owned by tenants in common), which may be termed sales by order of court.

As to sheriff's sales, the general rule is that a sale on any lien discharges that lien and all subsequent liens. Thus a sale on a first mortgage of the premises would discharge that mortgage as well as a second mortgage and any other lien *e. g.* as a subsequent judgment lien against the property. When a mortgage lien is prior to all other liens upon the same property except other mortgages, ground rents, purchase money due the commonwealth and except taxes, municipal claims and assessments not at the date of said mortgage duly entered as a lien in the office of the prothonotary of proper county, and except taxes, municipal claims and assessments, whose lien, though afterwards accruing has by law priority given it; the lien of such mortgage

shall not be discharged or destroyed or in any way affected by any such judicial or other sale whatsoever except as hereinafter stated whether such judicial sale shall be made by virtue or authority of any order or decree of any Orphans' or other court or of any writ of execution or otherwise howsoever provided that this section shall not apply to cases of mortgages on unseated lands or sales of the same for taxes (Act of May 8, 1901, Sec. 1, P. L. 141).

This act simply means that a sheriff's sale on any subsequent lien or by order of court will not discharge a mortgage if that mortgage is first lien or has prior to it other mortgages, ground rents, municipal liens and taxes. Thus if there should be before the mortgage in question, a judgment lien even though sale is made on execution issued on a judgment lien subsequent to the mortgage in question, that mortgage and everything subsequent and including the prior judgment lien will be cleared off and relegated to the fund. The rule as to sales by the order of court is exactly the same except that the holder of a mortgage whose only prior liens are other mortgages, grounds, taxes, etc., may waive his immunity and agree that the sale shall discharge his lien as well as subsequents, but this agreement must be expressly made (McFadden's Assigned Estate, 191 Pa. 624).

#### SECTION V.

##### ASSIGNMENT OF MORTGAGES.

##### 101. Definition. Form.

A mortgage like any other chose in action or debt may be assigned by the mortgagee at his pleasure and indeed after the death of the mortgagee by his executor or administrator. This is done by an instrument called an assignment of mortgage which in form must be a writing under seal, acknowledged and recorded. It must have two witnesses. The usual form is as follows:—

##### Assignment of Bond and Mortgage.\*

KNOW ALL MEN BY THESE PRESENTS, That *I, Richard Black, of the City of Philadelphia, State of Pennsylvania, Merchant,*

\*This is a regular printed form of assignment of mortgage, which may be purchased at any law book stationer. The words in italics are to be filled in by the conveyancer.

the Mortgagee named in the Indenture of Mortgage hereinafter mentioned, for and in consideration of the sum of *Thirty-five Hundred (\$3500.00) Dollars* lawful money, unto me in hand paid by *Robert Johnson, Builder, also of the said City and State* at the time of the execution hereof, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, assigns, transfer and set over unto the said *Robert Johnson, his heirs, executors, administrators and assigns, All That Certain Indenture of Mortgage given and executed by John Smith to Richard Black, bearing date the second day of January, A. D. 1912 and recorded in the Office for the Recording of Deeds in and for the County of Philadelphia in Mortgage Book, W. S. V. No. 1575, page 321, &c., on All that Certain lot or piece of ground with the Messuage or Tenement thereon erected, Situate on the West side of "Y" Street at the distance of Three hundred and thirty-seven feet Northward from the North side of "X" Street in the Fiftieth Ward of the City of Philadelphia. Containing in front or breadth on said "Y" Street Eighteen feet and extending of that width in length or depth Westward between parallel lines at right angles to the said "Y" Street One hundred feet to a certain Three feet wide alley extending Northward from "X" Street to "Z" Street.*

Also the Bond or Obligation in the said Indenture of Mortgage recited, and all *moneys principal and interest due and to become due thereon* with the Warrant of Attorney to the said Obligation annexed. Together with all Rights, Remedies and Incidents thereunto belonging. And all *my Right, Title, Interest, Property, Claim and Demand* in and to the same:

TO HAVE, HOLD, RECEIVE AND TAKE all and singular the hereditaments and premises hereby granted and assigned, or mentioned and intended so to be, with the appurtenances, unto the said *Robert Johnson, his heirs, executors, administrators and assigns, to and for his and their only proper use, benefit and behoof* forever; subject, nevertheless, to the equity of redemption of said John Smith Mortgagor in the said Indenture of Mortgage named, and *his heirs and assigns* therein.

In Witness Whereof, *I* have hereunto set *my* hand and seal this *seventh* day of *February* in the year of our Lord one thousand nine hundred and *twelve* (1912).

Sealed and delivered in the presence of us:

*Robert Roe.*

*John Doe,*

*Richard Black.* (Seal.)

State of Pennsylvania, }  
County of Philadelphia. } ss.

On the *seventh* day of *February*, Anno Domini 1912, before me, the subscriber, a *Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia* personally appeared the above-named *Richard Black* and acknowledged the above Deed-Poll of Assignment of Mortgage to be *his* act and deed, and desired the same might be recorded as such.

Witness my hand and *Notarial* seal.

*Robert Roe,*  
*Notary Public.*

This assignment when duly executed and acknowledged should be recorded. By the Act of April 6th, 1876, P. L. 18, Sec. 1, the recorder of deeds is required to note the assignment upon the margin of the record of the mortgage.

#### 102. Effect of Assignment and Rights of Assignee.

The assignment of mortgage carries with it all other securities which the mortgagee has for the same debt. As soon as the assignment is made the assignee should immediately notify the mortgagor that the mortgage has been assigned to him, and that in the future payments should be made to him, the assignee. Unless such notice is given a payment made by the mortgagor after the assignment to the original mortgagee will be binding against the assignee. The mortgagor is entitled to notice and he is under no duty to watch the records. The assignment of a mortgage is governed by the same rules of law governing the assignment and transfer of other non-negotiable instruments, to wit: That the assignee stands strictly in place of the assignor and is entitled to all the rights of the assignor and subject to all equities existing at the time of the assignment of the assignor. Thus if it should happen that before the assignment of the mortgage the mortgagor has paid the mortgagee a portion of the principal of the mortgage or has some other set-off, his set-off is good against the assignee even though the assignor made no mention of it (*Morgan's Appeal*, 126 Pa. 500). In order to protect himself therefore against such possible contingencies it is customary for the assignee to have the mortgagor execute a certificate of no set-off which is set forth and explained in the next paragraph. It is recommended that the assignee always requires a certificate of no set-off as in no other way can he be safe.

#### 103. Certificate of No Set-Off. Form.

A certificate of no set off is an instrument in writing signed and sealed by the mortgagee in which he certifies that he acknowl-

edges the receipt of notice of assignment of the mortgage and bond, and declares what amount of the principal of the mortgage debt is he still owes and that he has no set-off charge or other claim against the same. The form is as follows:

### Certificate of No Set-Off.\*

WHEREAS, *I, John Smith, of the City of Philadelphia, State of Pennsylvania*, being the present owner in fee, of the premises described in the Indenture of Mortgage hereinafter recited, do hereby acknowledge that I have received notice of an assignment about to be made of the said Mortgage, and of the Bond or Obligation therein recited by *Richard Black of the City of Philadelphia, State of Pennsylvania*, the holder thereof, to *Robert Johnson, of the said City and State*, and I do hereby declare that the sum of *Thirty-five Hundred (\$3500.00) Dollars* being the amount of the Mortgage thereof, is still owing with interest, at the rate of *five and four-tenths per cent. per annum*, from the *second day of January, A. D. 1912*, and thereafter payable half-yearly, on the *second day of the months of July and January* upon the Bond and Mortgage given by *John Smith* to *Richard Black* dated the *second day of January, A. D. 1912*. Recorded at *Philadelphia* in Mortgage Book *F. G., No. 129, page 249, &c., of Thirty-five Hundred (\$3500.00) Dollars*, and that *no part of said Mortgage Debt has been paid off*, and that I have no charge, claim, demand, plea, or set-off upon, for or against the same, in any way or manner whatever.

Witness my hand and seal this *seventh* day of February, A. D. 1912.

Sealed and delivered in the  
presence of

\_\_\_\_\_

} \_\_\_\_\_ (Seal.)

It is to be noted that this certificate of no set-off accomplishes two objects; it is an acknowledgment by the mortgagor, that he has received notice of the assignment which we found it is incumbent on the assignee to give (See Par. 102); and, second, it is an admission of the debt and that no defence exists thereto. If there is more than one mortgagor the certificate of no set-off should be executed by all. The mortgagor cannot be compelled to execute this certificate, although few would be so ungracious as to refuse. But should the refusal be persisted in, it of course, puts the proposed assignee on his guard and he should make diligent inquiry before taking the assignment.

\*This is the regular printed form of certificate of no set off, which can be purchased at any law blank stationer. The words in italics are to be filled in by the conveyancer as circumstances may require.

## CHAPTER VII.

### GROUND RENTS.

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#### SECTION I.

##### DEFINITION. FORM AND ANALYSIS.

#### 104. Ground Rent. Definition. History.

The meaning of ground rent is generally misunderstood more than any other term in the science of conveyancing, and this is in a great measure due to its inappropriate name, which leads most people to believe it to mean rented ground. The idea that a man who pays ground rent does not own the ground in fee is as unfortunate as it is erroneous. The real meaning of the term ground rent is best explained by briefly developing its history. In early English history there existed an estate in land called a Rent Service, which was created by a lord conveying land to one of his vassals in fee, reserving to himself, however, the right to call upon his vassal's service so long as he remained

the owner of the land. Later, instead of reserving the right of demanding the actual service of the vassals, the lords granting the land began to reserve to themselves the right to receive annually a certain sum of money instead. At common law, therefore, a rent service became an estate in land reserved by the grantor to himself out of the granted estate. This reserved part usually consisted of a right to services or a right to receive a certain sum of money paid at fixed intervals according to the terms of the grant. The so-called ground rent is a lineal decedent of the old rent service. It possesses all its attributes (*Ingersoll v. Sergeant*, 1 Whart. 337) and is created the same way. The method of creating a ground rent is as follows: The owner of the land conveys to a grantee his whole estate, reserving, however, for himself the ground rent out of it. The former owner or grantor then has the ground rent estate and the grantee owns the lands subject to the payment of this rent. The owner of the ground rent is sometimes called the grantor and sometimes the ground rent landlord. The owner of the land subject to the payment of the ground rent is sometimes called the grantee; sometimes the *terre tenant* and sometimes the *covenantor*. A ground rent can only be created by the person having a fee simple estate reserving it out of a conveyance to some one else. Therefore, if A desires to give B a ground rent in a certain piece of land, he must first convey unto B his whole estate, which makes B the owner in fee. B must now reconvey the land to A, reserving unto himself a sum of money or rental to be paid yearly. A is once again the owner in fee of the land, but he must now pay to B a certain tribute every year. Thus it will be seen that a ground rent is nothing more or less than "a rent (usually a sum of money payable at stated intervals) reserved by a grantor, to himself, his heirs and assigns in conveying land in fee" (*Ingersoll v. Sergeant*, 1 Whart. 337). This rent, while usually a sum of money, like the common law rent service, may either be in kind, services or chattels.

The ground rent is generally unknown throughout the rest of this country. It is in use in some few of the states, perhaps in parts of New York or New Jersey. With these exceptions it is peculiar to Pennsylvania, and even in Pennsylvania outside of the City of Philadelphia it is a rarity. In Philadelphia, however, ground rents are very common. The creation of ground rents were used for the building up of the City of Philadelphia, and

was of inestimable value in doing it. The method was that the owner of a tract of land would convey it to B, reserving a perpetual rent generally with a condition that the rent might be paid off within a certain time upon the payment of an amount equal to the rent capitalized at 6%. Of course, the advantage of the ground rent was that the purchaser or grantee did not need to pay any ready money to complete his purchase, but simply had to go upon the land, improve it and so earn the purchase money. Again, the ground rent was used and to this day is still used as an incumbrance for the loaning of money, as in the case of a mortgage. In such case, as explained before, A being the owner of the land and desiring to borrow money on it would convey it to B for a nominal consideration and B would immediately reconvey it to A, reserving the rent; in this way the ground rent estate became a security for the money loaned.

#### 105. Form and Analysis of Ground Rents.

##### Ground Rent Deed.\*

THIS INDENTURE, made the *first day of February*, in the year of our Lord one thousand nine hundred and *twelve (1912)*, between *John Smith, gentleman, of the City of Philadelphia, State of Pennsylvania, of the one part, and Rudolph Long, of the City of Philadelphia, State of Pennsylvania, builder, of the other part.* WITNESSETH, That the said *John Smith*, as well for and in consideration of the sum of *one (\$1.00) dollar*, lawful money, unto *him*, at or before the sealing and delivery hereof, by the said *Rudolph Long*, well and truly paid, the receipt whereof is hereby acknowledged, as of the payment of the yearly rent and taxes, and performance of the covenants and agreements hereinafter mentioned, which on the part of the said *Rudolph Long, his heirs and assigns*, is and are to be paid and performed, *hath* granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents *doth* grant, bargain, sell, alien, enfeoff, release and confirm unto the said *Rudolph Long, his heirs and assigns*, *all that certain lot or piece of ground situate on the west side of Y Street at a distance of three hundred and thirty-seven (337') feet northward from the north side of X Street, in the Fiftieth Ward of the City of Philadelphia, containing in front or breadth of said Y Street eighteen*

\*This is also a regular printed form of ground rent deed, which can be purchased at any law blank seller. Words in italics are to be filled in by the conveyancer as circumstances may require.



(18') feet and extending of that width in length or depth westward between two parallel lines at right angles to said X Street one hundred (100') feet to a certain three feet wide alley, and extending northward from X Street to Z Street.

Being the same premises which Andrew Brown and wife, by indenture bearing date the second day of January, A. D. 1912, and recorded in the Office for the Recording of Deeds in Deed Book W. S. V. No. 1362, page 45, etc., granted and conveyed unto the said John Smith in fee.

Together with the right, liberty and privilege of the aforesaid alley as and for a passageway, and water course hereafter forever. And

TOGETHER with all and singular the buildings, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, unto the said hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders thereof: TO HAVE AND TO HOLD the said described lot or piece of ground, hereditaments and premises hereby granted, with the appurtenances, unto the said Rudolph Long, his heirs and assigns, to the only proper use and behoof of the said Rudolph Long, his heirs and assigns, forever, YIELDING AND paying therefor and thereout, unto the said John Smith, his heirs and assigns, the yearly rent or sum of sixty (\$60.00) dollars, lawful money of the United States of America, in half yearly payments, on the first day of February and first day of August in every year hereafter forever, without and deduction, defalcation or abatement, for any taxes, charges or assessments whatsoever, to be assessed, as well on the said hereby granted lot as on the said yearly rent hereby and thereout reserved; the first payment thereof to be made on the first day of August, one thousand nine hundred and twelve (1912), and on default of paying the said yearly rent on the day and time and in manner aforesaid, it shall and may be lawful for the said John Smith, his heirs and assigns, to enter into and upon the said hereby granted premises, or any part thereof, and into the buildings thereon erected or to be erected, and to distrain for the said yearly rent so in arrear and unpaid, without any exemption whatsoever, any law to the contrary thereof in any wise notwithstanding, and to proceed with and sell such distrained goods and effects according to the usual course of distresses for rent charges. But if sufficient distress cannot be found upon the said hereby granted premises to satisfy the said yearly rent in arrear, and the charges of levying the same, then and in such case it shall and may be lawful for the said John Smith, his heirs and assigns, into and upon the said hereby granted lot and all improvements wholly to re-enter, and the same to have again, repossess and enjoy, as in his or their first and former estate and title in the same, and as though this indenture had never been made. And if at any time suit shall

be properly brought by the said grantor, *his* heirs and assigns, to recover any arrearages of the yearly rent then due and unpaid, then and in such case, an attorney's fee of *fifty* (\$50.00) dollars, shall be added to the arrearages of the yearly rent, and be recovered and collected in such suit, as part of the costs thereof. And the said *Rudolph Long*, *his* heirs, executors, administrators and assigns do covenant, promise and agree, to and with the said *John Smith*, *his* heirs and assigns, by these presents, that he, the said *Rudolph Long*, *his* heirs and assigns, shall and will well and truly pay, or cause to be paid, to the said *John Smith*, *his* heirs and assigns, the aforesaid yearly rent or sum of *sixty* (\$60.00) dollars, lawful money aforesaid, on the days and times hereinbefore mentioned and appointed for payment thereof, without any deduction, defalcation, or abatement for any taxes, charges or assessments whatsoever; it being the express agreement of the said parties, that the said *Rudolph Long*, *his* heirs and assigns, shall pay all taxes whatsoever that shall hereafter be laid, levied or assessed by virtue of any laws whatever, as well on the said hereby granted lot and buildings thereon *erected or to be erected*, as on the said yearly rent now charged thereon. (Also, that he, the said *Rudolph Long*, *his* heirs or assigns, shall and will within *three years* from the date hereof, erect and build on the said hereby granted lot a *two-story stable* to secure the said yearly rent hereby reserved.) And further, the said *Rudolph Long* doth hereby for *himself*, *his* heirs, executors, administrators and assigns, expressly waive, relinquish and dis-pense unto the said *John Smith*, *his* heirs, executors, administrators and assigns, all and every provisions and provision in the Act of Assembly of the Commonwealth of Pennsylvania, passed on the ninth day of April, A. D. 1849, entitled "An act to exempt property to the value of three hundred dollars from levy and sale on execution and distress for rent," so far as the same may exempt the said hereby granted lot and any part thereof, and any buildings or improvements to be erected or placed thereon, from levy and sale, by virtue of any writ of execution that may be issued upon any judgment that may be obtained or entered in any action for the recovery of the rent hereby reserved, or hereby covenanted to be paid, and of any arrears thereof, and of the costs of such action and execution: also, any other act of assembly now or hereafter to be passed, authorizing any stay of execution upon any judgment until an appraisement of the property shall be made, or upon any other condition whatsoever; so that it shall be lawful for the said *John Smith*, *his* heirs, executors, administrators or assigns, to proceed, by execution, to levy upon and sell the said hereby granted lot of ground, and every part thereof, with the buildings and improvements as aforesaid, in the same manner and to the same extent and to the same effect, to all intents and purposes, as if no such act of assembly had been passed: PROVIDED ALWAYS, nevertheless, That

if the said *Rudolph Long*, his heirs or assigns, shall and do at any time after the expiration of *ten years from the date hereof* pay, or cause to be paid to the said *John Smith*, his heirs or assigns, the sum of *one thousand (\$1,000.00) dollars* lawful money as aforesaid, and the arrearages of the said yearly rent to the time of such payment, then the same shall forever thereafter cease and be extinguished, and the covenant for payment thereof shall become void; and then he, the said *John Smith*, his heirs, or assigns, shall and will, at the proper costs and charges in the law of the said grantee, his heirs or assigns, seal and execute a sufficient release and discharge of the said yearly rent hereby reserved, to the said *Rudolph Long*, his heirs and assigns, forever, anything hereinbefore contained to the contrary thereof notwithstanding. And the said *John Smith*, for himself his heirs, executors and administrators, doth covenant, promise and agree to and with the said *Rudolph Long*, his heirs and assigns, by these presents, that he, the said *Rudolph Long*, his heirs and assigns, paying the said yearly rent, or extinguishing the same, and taxes, and performing the covenants and agreements aforesaid, shall and may at all times hereafter forever, freely, peaceably and quietly have, hold and enjoy, all and singular the premises hereby granted, with the appurtenances, and receive and take the rents and profits thereof, without any molestation, interruption or eviction of the said *John Smith*, his heirs, or any other person or persons whomsoever, lawfully claiming or to claim, by, from or under him or them, or any of them, or by or with his or their, or any of their act, means, consent or procurement.

IN WITNESS WHEREOF, the said parties to these presents have hereunto interchangeably set their hands and seals the day and years first above written.

Sealed and delivered in the  
presence of us:

*Richard Roe.*

*John Doe,*

*John Smith.* (Seal.)

*Rudolph Long.* (Seal.)

On the *first day of February*, Anno Domini *1912*, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared the above-named *John Smith and Rudolph Long*, and in due form of law acknowledged the above indenture to be their and each of their act and deed, and desired the same might be recorded as such.

Witness my hand and notarial seal, the day and year aforesaid.

*Richard Roe,*  
Notary Public.

*Commission expires February 25, 1915.*

The instrument by which a ground rent is created is called a ground rent deed. This deed contains covenants on the part of the grantor and grantee and is executed in duplicate as all indentures ones were (See Par. 52). One copy is recorded and the other marked counterpart and they are retained by the owner of the land and of the ground rent, respectively. By examining the form set forth on page 142 it will be seen that a ground rent deed reads the same as an ordinary deed of conveyance until you reach the habendum (to have and to hold clause), where, after the word forever is added the following (See form, page 143), which may be termed "Reservation."

YIELDING and paying therefor and thereout, unto the said JOHN SMITH, his heirs and assigns, the yearly rent or sum of sixty (\$60.00) dollars lawful money of the United States of America, in half-yearly payments on the first day of February and first day of August in every year hereafter, forever, without any deduction, defalcation or abatement, for any taxes, charges or assessments whatsoever, to be assessed, as well on the said hereby granted lot as on the said yearly rent hereby and thereout reserved; the first payment thereof to be made on the first day of August, one thousand nine hundred and twelve (1912). And on default of paying the said yearly rent on the days and times and in manner aforesaid, it shall and may be lawful for the said JOHN SMITH, his heirs and assigns, to enter into and upon the said hereby granted premises, or any part thereof, and into the buildings thereon erected or to be erected, and to distrain for the said yearly rent so in arrear and unpaid, without any exemption whatsoever, any law to the contrary thereof in any wise notwithstanding, and to proceed with and sell such distrained goods and effects according to the usual course of distresses for rent charges. But if sufficient distress cannot be found upon the said hereby granted premises to satisfy the said yearly rent in arrear, and the charges of levying the same, then and in such case it shall and may be lawful for the said JOHN SMITH, his heirs and assigns, into and upon the said hereby granted lot and all improvements wholly to re-enter, and the same to have again, repossess and enjoy, as in his or their first and former estate and title in the same, and as though this indenture had never been made. And if at any time suit shall be properly brought by the said grantor, his heirs and assigns, to recover any arrearages of the yearly rent then due and unpaid, then and in such case, an attorney's fees of fifty (\$50.00) dollars, shall be added to the arrearages of the yearly rent, and be recov-

ered and collected in such suit, as part of the costs thereof. And the said RUDOLPH LONG, his heirs, executors, administrators and assigns, do covenant, promise and agree, to and with the said JOHN SMITH, his heirs and assigns, by these presents, that he the said RUDOLPH LONG, his heirs and assigns, shall and will well and truly pay, or cause to be paid, to the said JOHN SMITH, his heirs and assigns, the aforesaid yearly rent or sum of sixty (\$60.00) dollars lawful money aforesaid, on the days and times hereinbefore mentioned and appointed for payment thereof, without any deduction, defalcation or abatement for any taxes, charges or assessments whatsoever; it being the express agreement of the said parties, that the said RUDOLPH LONG, his heirs and assigns, shall pay all taxes whatsoever that shall hereafter be laid, levied or assessed by virtue of any laws whatever, as well on the said hereby granted lot and buildings thereon erected or to be erected, as on the said yearly rent now charged thereon. (Also, that he, the said RUDOLPH LONG, his heirs and assigns, shall and will within three years from the date hereof, erect and build, on the said hereby granted lot a two-story stable to secure the said yearly rent hereby reserved.) And further, the said RUDOLPH LONG doth hereby for himself, his heirs, executors, administrators and assigns, expressly waive, relinquish and dispense unto the said JOHN SMITH, his heirs, executors, administrators and assigns, all and every provision in the act of assembly of the Commonwealth of Pennsylvania, passed on the ninth day of April, A. D. 1849, entitled "An act to exempt property to the value of three hundred dollars from levy and sale on execution and distress for rent," so far as the same may exempt the said hereby granted lot and any part thereof, and any buildings or improvements to be erected or placed thereon, from levy and sale, by virtue of any writ of execution that may be issued upon any judgment that may be obtained or entered in any action for the recovery of the rent hereby reserved, or hereby covenanted to be paid, and of any arrears thereof, and of the costs of such action and execution; also any other act of assembly now or hereafter to be passed, authorizing any stay of execution upon any judgment until an appraisement of the property shall be made, or upon any other condition whatsoever; so that it shall be lawful for the said JOHN SMITH, his heirs, executors, administrators or assigns, to proceed, by execution, to levy upon and sell the said hereby granted lot of ground, and every part thereof, with the buildings and improvements as aforesaid, in the same manner and to the same extent

and to the same effect, to all intents and purposes, as if no such act of assembly had been passed: PROVIDED ALWAYS, nevertheless, That if the said RUDOLPH LONG, his heirs or assigns, shall and do at any time after the expiration of ten years from the date hereof pay, or cause to be paid to the said JOHN SMITH, his heirs or assigns, the sum of one thousand (\$1,000.00) dollars lawful money as aforesaid, and the arrearages of the said yearly rent to the time of such payment, then the same shall forever thereafter cease and be extinguished, and the covenant for payment thereof shall become void; and then he, the said JOHN SMITH, his heirs or assigns, shall and will at the proper costs and charges in the law of the said grantee, his heirs or assigns, seal and execute a sufficient release and discharge of the said yearly rent hereby reserved, to the said RUDOLPH LONG, his heirs and assigns, forever, anything hereinbefore contained to the contrary thereof notwithstanding. And the said JOHN SMITH, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said RUDOLPH LONG, his heirs and assigns, by these presents that he the said RUDOLPH LONG, his heirs and assigns, paying the said yearly rent, or extinguishing the same, and taxes, and performing the covenants and agreements aforesaid, shall and may at all time hereafter forever, freely, peaceably, and quietly have, hold and enjoy, all and singular the premises hereby granted, with the appurtenances and receive and take the rents and profits thereof, without any molestation, interruption or eviction of JOHN SMITH, his heirs, or of any other person or persons whomsoever, lawfully claiming or to claim by, from or under him or them, or any of them, or by or with his or their, or any of their act, means, consent or procurement.

Analyzing this it will be seen that it provides, first, for the amount of rent reserved in what, and how it shall be paid. Modern ground rent deeds set forth merely lawful money of the United States, the older ones usually stipulated the metal, and specified the weight and fineness. Then follows an agreement permitting the grantor or owner of ground rent, his heirs or assigns to enter to make distress if the rent is unpaid and following it a provision that if sufficient distress be not found the grantor, his heirs or assigns may re-enter and take possession. Modern ground rent deeds also have the next clause inserted providing for an attorney's fee of whatever amount agreed on, to be added to the arrearages of the ground

rent, should it be necessary to commence suit thereon. This provision for attorney's fee relieves the grantor from this burden which he bore under the older deeds and saddles it on the grantee. Next a covenant on the part of the grantee to pay all the taxes assessed against the property which is important in that it relieves the grantor from paying any taxes on his ground rent.

The clause in parentheses may be termed the "covenant to build." As here set forth, it requires the grantee to build a stable. If improvements are already erected on the lot and no additional ones contemplated, this clause should be omitted or crossed out. The next clause is that waiving the Exemption Act. The remedy of distress is of little value unless the Exemption Act is waived, so care should be taken to always insert it. Then follows the agreement that if at any time the owner of the ground rent is paid \$1,000.00 (which is the capitalized principal of \$60.00 per year at 6%) he will execute the necessary instruments to extinguish it. The rest is the usual covenant of quiet enjoyment and is self explanatory.

## SECTION II.

### NATURE AND KINDS OF GROUND RENTS.

#### 106. **A Ground Rent is Real Estate.**

From the foregoing section it is readily seen that a ground rent is essentially different from a mortgage both in creation and effect. A ground rent is an estate in the land and is, therefore, real estate, whereas a mortgage is but a pledge of the land to repay a debt and is personal property. A ground rent is an estate in land and is an estate in fee, although separate and distinct the fee estate of the land itself, out of which it issues. The ground rent being an incorporeal estate and the latter a corporeal estate. A ground rent being real estate may itself be mortgaged (*Weidner v. Foster*, 2 P. & W. 23; *Bank of Commerce v. Peace*, 27 Pa. Superior 644). It is just like other real property, subject to the assessment and payment of real estate taxes and upon death of the owner it passes to the devisee or heir and not to the executor or administrators. The fact that a ground rent is real estate is likewise reflected in the the instrument creating it and in a way it is extinguished.

**107. Irredeemable Ground Rents.**

Ground rents in Pennsylvania are of two kinds, Redeemable and Irredeemable. Irredeemable ground rents, as the name implies, are such as can never be redeemed, that is, never paid off. These irredeemable ground rents were the older form, for originally ground rents were perpetual when the deeds reserving them used the words "In every year hereafter forever." Later it became customary to place in the deed reserving the ground rent a provision that if said ground rent should not be extinguished (*i. e.*, paid off) within a specified period it should become irredeemable. Although at the present time there are few ground rents existing in Pennsylvania which were originally irredeemable, there are many still existing which have become irredeemable by operation of the clause such as above stated. Since the Act of June 24, 1885, P. L. 161, no new irredeemable ground rents can be created for that act in positive terms forbids their creation and provides that notwithstanding any irredeemable clause in a ground rent created after the act, it shall nevertheless be redeemable.

**108. Redeemable Ground Rents.**

Redeemable ground rents are such as can be redeemed or extinguished at any time after their creation at the pleasure of the owner of the land, that is, the grantee who must pay the ground rent. The ground rent owner or ground rent landlord can never demand the payment of the principal unless a clause giving him such a right is inserted, in which case he may demand the payment of the principal only at the expiration of the term fixed, notwithstanding any default.

**109. Apportionment of Ground Rents.**

A peculiar attribute of a ground rent is that a ground becomes apportioned as the land out of which it issues is divided. That is, suppose a tract of land out of which a ground rent issues is divided into three parts, out of each part of the original tract must be paid its proportionate part of the whole rent, in this case one-third. If the holder of the remaining part pays the whole rent he may maintain an action against the owners of the other parts for their proportionate contribution. The release of the ground rent as to any part of the divided tract has no



effect on the remainder, which still exists in full force until released or extinguished (*Ingersoll v. Sergeant*, 1 Whart. 337).

Not only may the land out of which the rent issues be apportioned but the ownership of the rent may also be divided among any number of persons, and the owner of any portion may maintain a separate action for his portion of the rent and the tenant is bound to pay each his due portion (*Reed v. Ward*, 22 Pa. 144).

### SECTION III.

#### REMEDIES FOR COLLECTION OF GROUND RENT AND PRINCIPAL.

##### 110. When and How Rent Must be Paid.

The rent must be paid according to the terms of the deed. If it provides that rent is to be paid in lawful money of the United States it may be paid in any legal tender. If it provides "payable in coin of a specified weight and fineness" it must be paid by coin of that weight and fineness, unless such coin is no longer legal tender, in which case it may be paid in legal tender (*Cook v. Lovett*, 17 D. R. 347). It must be paid when due or the ground rent landlord may proceed to collect the rent by any remedies hereinafter set forth; which remedies are cumulative; i. e., the party entitled to the ground rent may invoke any or all until he is satisfied (*Hiester v. Shaefer*, 45 Pa. 537).

##### 111. Remedy by Distress.

The owner of the ground rent may distrain like the lessor of a term of years. This right is an incident of a ground rent and exists without special provision in the deed (*Wallace v. Harmstead*, 44 Pa. 492). Although the ground rent deeds usually have inserted a distress clause in the deed which includes a waiver of exemption in order to make this remedy more complete. In distress for ground rent the procedure is the same as any other distress for house rent, and if the ground rent deed contains a waiver of the exemption law it is usually effective. Tenant's goods as well as the owner is liable for distress.

##### 112. Remedy by Re-entry.

This remedy is practically obsolete although it may still be enforced. It is, however, a troublesome procedure and rarely used because the following steps must be carefully taken: Dis-

tress must first be made and if sufficient property be not found to pay the rent due, an actual demand must be made before sundown on the precise day when due for the exact amount (*McCormick v. Connell*, 6 S. & R. 151). This demand must be made even though the land is unoccupied (*Homet v. Singer*, 35 Superior Ct. 491). If possession of the land be refused ejectment proceedings must be commenced to oust the tenant in possession. If there be no one in possession, then the ground rent landlord may enter without difficulty, but as there is nothing on record, equity proceeding must be commenced to perpetuate testimony (*Cadwallader v. App*, 81 Pa. 194).

#### 113. Remedy by Action of Ejectment.

Wherever the ground rent deed provides for a right to re-enter upon the breach of covenants then the ground rent landlord may begin an action of ejectment upon such breach. This is the more common method of proceeding where the right to re-enter is desired to be enforced, having the advantage of avoiding a personal conflict and being a matter of record.

#### 114. Remedy by Suit or Action of Assumpsit.

The most common remedy to recover ground rent due is to sue the tenant, the person liable to pay the ground rent in an action of contract. The ground rent deed is a contract or covenant to pay the rent hence an action of contract lies. If the original grantee of the land out of which the rent issues transfers the land, the assignee becomes liable to pay the rent and a personal action may be commenced against him. But since the Act of June 12, 1878, P. L. 205, the personal liability for ground rent remains only so long as the grantee owns the land; he is relieved of such personal liability on bona fide conveying the land to a purchaser.

### SECTION IV.

#### LIEN AND DISCHARGE OF GROUND RENTS.

#### 115. Lien of Ground Rents and Arrearages of Rent.

Strictly speaking a ground rent is not a lien, though its practical effect on the title is that of any other incumbrance. Therefore, a property subject to a ground rent would not satisfy the terms of an agreement of sale calling for a market-

able title clear of all encumbrance. Not only is the ground rent in the nature of a lien on property but all the arrears of the ground rent, rent or interest unpaid remains a lien against the property as of the date of the ground rent deed. This means that a mortgage on a property subject to a ground rent comes after ground rent arrearages that may have accrued after the mortgage because all of these arrearages become liens as of the date of the ground rent deed. Said the Supreme Court of Pennsylvania (Devine's App., 30 Pa. 351): "The priority of the lien for arrears is determinable by the date of the ground rent deed without regard to the time when they accrued. It is to the deed alone that the subsequent incumbrance or purchaser can look."

**116. Discharge of Ground Rents by Extinguishment. Form.**

A ground rent cannot be discharged on payment of principal sum, by merely satisfying the record, as in the case of a mortgage. It must be done by a formal instrument called a deed of extinguishment. As it is really a conveyance of real estate, all formalities incident to ordinary deeds must be observed. Thus, if the owner of the ground rent is married his wife must join in the deed of extinguishment to release her dower. A form of a Deed of Extinguishment is here given. It is really an assignment of the rent to the owner of the land and operates to extinguish the ground rent as explained in the next paragraph (117). The same form can be used for assignments of ground rents to third parties.

**Deed of Extinguishment or Assignment of Ground Rent.\***

THIS INDENTURE, made the *first* day of *August*, in the year of our Lord one thousand nine hundred and *twelve* (1912), BETWEEN *John Smith, gentleman, of the City of Philadelphia, State of Pennsylvania, and Rudolph Long, builder, of the City of Philadelphia, State of Pennsylvania*, of the other part: WITNESSETH, That the said *John Smith*, for and in consideration of the sum of *one thousand (\$1,000.00) dollars*, lawful money of the United States of America, unto *him* well and truly paid by the said *Rudolph Long* at and before the sealing and delivery

\*This is the regular printed form of deed of extinguishment or assignment. The words in italics are filled in by the conveyancer. The same form may be used for assignments of ground rents, in which case instead of using the words, "sell, release and confirm," in the granting clause, use the words, "sell, assign, transfer and set over."

of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, confirmed and by these presents doth grant, bargain, sell, release and confirm unto the said Rudolph Long, his heirs and assigns, all that certain yearly ground rent charge or sum of sixty dollars, chargeable on and payable in half-yearly payments on the first days of the months of February and August in every year without deduction for taxes, etc., issuing out of all that certain lot or piece of ground situate on the west side of "Y" Street, at a distance of three hundred and thirty-seven (337') feet northward from the north side of "X" Street, in the Fiftieth Ward of the City of Philadelphia, containing in front or breadth of said "Y" Street Eighteen (18') feet and extending of that width in length or depth westward between two parallel lines at right angles of said "X" Street one hundred (100') feet to a certain three feet wide alley, and extending northward from "X" Street to "Z" Street. Being the same premises which Andrew Brown and wife by indenture bearing date the second day of January, A. D. 1912, and recorded in the Office for the Recording of Deeds in Deed Book W. S. V., No. 1362, page 45, etc., granted and conveyed unto the said John Smith in fee. Together with the right, liberty and privilege of the aforesaid alley as and for a passageway and water-course hereafter forever. And TOGETHER with all and singular the ways, means, rights, privileges, remedies, right and power of entry, distress and of re-entry, and all other the covenants, ways, means and remedies for recovering payment of the aforesaid yearly ground rent and the arrearages thereof, and all and singular the other rights incidents and appurtenances whatsoever thereunto belonging, and the reversions and remainders thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of him, the said John Smith, either in law or equity, as well of, in, to and out of the said yearly rent or sum hereby granted, as also of, in and to the aforesaid lot or piece of ground, with the appurtenances, for and out of which the said rent issuing and payable: To HAVE AND TO HOLD the said yearly ground rent with the appurtenances, hereditaments and premises hereby granted, or mentioned and intended so to be, with the rights, remedies, incidents and appurtenances, unto the said Rudolph Long, his heirs, executors, administrators and assigns, to and for the only proper use and behoof of the said Rudolph Long, his heirs, executors, administrators and assigns forever. And the said John Smith does by these presents, covenant, grant and agree, to and with the said Rudolph Long, his heirs, executors, administrators and assigns, that he, the said John Smith, all and singular the hereditaments and premises hereby granted, or mentioned or intended so to be, with the rights, remedies, incidents and appurtenances, unto the said Rudolph Long, his heirs, executors, administrators and assigns, against the said John Smith, his

heirs, executors, administrators and assigns, and against all and every other person or persons whomsoever lawfully claiming or to claim, by, from or under him, them or any of them, shall and will warrant and forever defend by these presents.

IN WITNESS WHEREOF, the said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

Sealed and delivered in the  
presence of us: }

*John Doe.*

*Richard Roe.*

*John Smith.* (Seal.)

RECEIVED, the day of the date of the above indenture, of the above-named *Rudolph Long* the sum of *one thousand* (\$1,000.00) *dollars*, being the full consideration money above mentioned.

WITNESS AT SIGNING: }  
*Richard Roe.*

*John Smith.*

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss:

ON THE *first* day of *August*, Anno Domini 1912, before me, *the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia*, personally appeared the above-named *John Smith*, and in due form of law acknowledged the above indenture to be his act and deed, and desired the same might be recorded as such.

WITNESS my hand and *notarial* seal the day and year aforesaid.

*Richard Roe,*  
*Notary Public.*

#### 117. Discharge by Merger.

If the owner of the ground rent subsequently acquires title to the land out of which the rent issues, the ground rent is said to be merged and is extinguished. By operation of law, when the right to the land and the right to the rent are united in the same person, the rent becomes extinct (*Charnley v. Hansbury*, 13 Pa. 16). But this does not happen where a mortgage intervenes which was given by a prior owner of the land (*Cook v. Brightly*, 46 Pa. 439). And it must, also, be the same person who holds the fee, so where a ground rent of a wife's real estate was acquired by the husband, it was held not to have merged even after the wife died and the husband became possessed of her real estate by curtesy (*Pa. Co. v. Singheiser*, 235 Pa. 241).

**118. Discharge by Order of Court After Lapse of Twenty-one Years.**

Under the Act of April 27, 1855, P. L. 368, "where no payment claim or demand shall have been made on account, of or for any ground rent, annuity or other charge upon real estate for twenty-one years, or no declaration or acknowledgment of the existence thereof shall have been made within that period by the owner of the premises, subject to such ground rent, annuity or charge, a release shall be presumed. Appropriate proceedings exist whereby the court will order an extinguishment on the record of a ground rent barred by this act.

**119. Discharge of Ground Rent on Judicial Sale.**

As in the case of a mortgage, if there is no lien prior to the ground rent, a sale on any subsequent lien will not discharge the ground rent. But a sheriff's sale will discharge a ground rent if there should be a judgment lien against premises prior to the ground rent. The rule laid down in Par. 100 as to discharge of mortgages applies equally to ground rents.

**SECTION V.****120. Mortgages and Ground Rents Compared.**

Mr. Fallon (Pa. Law of Conveyancing, on page 459), from the viewpoint of an investor, has compared the respective advantages of a ground rent and mortgage and a review of his comparison may be of some benefit.

First: A ground rent is real estate and is descendable to the heir, subject to curtesy and dower right to the real estate. On the other hand, a mortgage is personal property and goes to the administrator. A ground rent being real estate is, of course, subject to the lien of judgment, may even be mortgaged; but a mortgage is not so subject to lien of judgment, but may only be attached on an attachment execution issued for that purpose.

Second: The holder of a ground rent can never demand the payment of the principal (unless specified to the contrary), so that if the property should depreciate in value, he cannot protect his capital by withdrawing it; mortgages, on the other hand, are made for a fixed period, usually three to five years, and if the holder at the end of that time is not satisfied with his investment, he can call in the principal.

Third: Should it become necessary to sell the property for the non-payment of rent, the holder thereof is at the expense of the sale, although in recent years many deeds contain a provision for an attorney's fee (See Form, page 144). The recovery of the cost upon the ground rents not exceeding \$100.00 is, however, secured by the Act of April 8, 1857, P. L. 175. Mortgages, on the other hand, invariably provide for an attorney's fee, in case foreclosure is necessary and should the property not realize sufficient to pay off the debt, interest and costs, the holder can resort to the bond accompanying the mortgage for the balance due.

Fourth: The cost of satisfying a mortgage is small compared to the extinguishment of a ground rent, which, it will be remembered, must be done by a deed, carefully drawn, executed and recorded.

Fifth: Ground rents, however, are usually not taxable, unless the deeds creating them do not contain the usual clause of covenant to pay all taxes on the rent and on the land. Mortgages, however, are subject to a state tax of four mills on a dollar, but these four mills are usually added in the mortgage to the rate of interest, hence for a five per cent. mortgage the rate is fixed at 5 4-10 per cent.

## CHAPTER VIII.

### RECORDING OF DEEDS AND OTHER INSTRUMENTS OF CONVEY- ANCING.

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### RECORDING OF DEEDS.

#### 121. Recording of Deeds. Definition. Origin.

By recording of deeds we mean the copying of the deeds by an official duly designated by the state, into a book which is preserved as a public record. In some states this is called registering of deeds, and the official who copies the deed is called the "register of deeds." In Pennsylvania, this act is called recording of deeds, and the official is known as the recorder of deeds.

In early English history not all kinds of deeds were required to be recorded, with the result that the recording was haphazard and of little use in protecting innocent purchasers. William Penn, with the object lesson of the inefficient recording system of England before him, determined when he embarked for his domain, Pennsylvania, to establish among the first things an efficient recording system so as to place Pennsylvania titles on a solid foundation. Accordingly, he caused to be passed various recording acts which were later revised and consolidated by the Act of May 28, 1715 (1 Sm. L. 94). This act provided a system of recording which has persisted in Pennsylvania with but few changes, to the present time. Later, by the Act of March 18, 1775, 1 Sm. L. 442, the recording of all deeds was made obligatory.



**122. Object and Purpose of Recording.**

The object of recording deeds as stated by the Supreme Court of Pennsylvania (*Salter v. Reed*, 15 Pa. 260) is "to protect purchasers against fraud and possible loss of evidence of title by providing books wherein their deeds might be recorded and to which interested parties might have access and enabled to ascertain the condition of the title before lending money on it." In order to fully accomplish this purpose the law also provides that exemplified copies from the record, *i. e.*, copies made and certified by the recorder of deeds, of all instruments authorized by law to be recorded, may be evidence in court without formally proving execution (Act of May 28, 1715, 1 Sm. L. 94). So, if the original deed is lost an exemplified copy of the record can be received as evidence of the contents of said deed, and this even without proving its loss (*Curry v. Raymond*, 28 Pa. 144).

**123. Recording is Notice to World.**

The recording of a deed gives notice of its existence to the world. Notice is of two kinds, actual notice which, of course, means express or direct notice, and constructive notice, which means such notice as is assumed or implied. Thus, when the recording act says that an instrument recorded according to the terms of the act shall be constructive notice, it means, that from the mere recording everyone is assumed to have notice of its existence, although in point of fact no one would know of its existence unless present at its creation or had examined the record.

**124. Effect of Not Recording Deeds.**

In order to make the recording acts effective for the protection of people against frauds, the law must visit some disadvantage in the nature of a penalty on such who do not record their deeds and mortgages. This is done by the recording acts, which provide that if a deed is not recorded it shall be void as against a subsequent purchaser or mortgagee for a valuable consideration without notice. Observe, the non-recording of a deed does not make it totally void in Pennsylvania, but it makes it void as against a subsequent purchaser who buys the same land, gives value for it and has no actual notice of the existence of the prior deed. Thus, suppose A executes and delivers a deed to

B, who fails to record his deed; A now afterwards makes another deed for the same land to C, who pays value for it; as against A, B's deed is still good, but as against C, B's deed is void unless he can prove either that C gave no value for it or actually knew or should have known of the prior transaction. In this way the law protects the innocent purchaser without enabling the grantor to derive any benefit from the non-recording of deed. The law desires not so much to punish B as to protect C.

#### 125. Time Within Which Deeds Must be Recorded.

Deeds must be recorded within ninety days from their date of execution (Act of May 19, 1893, P. L. 108) in order to be entitled to priority from the time of execution. Before the Act of May 19, 1893, six months was the time allowed, although this act reduces the time to ninety days for deeds executed within this Commonwealth. If the deed be executed outside of the State, six months are allowed in which to record it. When a deed is not recorded within the statutory period it is void against subsequent purchasers and mortgagees of the same land for value without notice, and nothing can save it, but getting it on record before a second purchaser records his deed. Thus, in a decision (*Fries v. Null*, 154 Pa. 573), before the Act of May 19, 1893, it was held that a deed recorded after the statutory period has nevertheless priority over a later deed recorded subsequently, though within the statutory period. The effect of this decision, therefore, was that recording a deed at any time within the ninety days protects it against *subsequent* deeds but not against *prior* unrecorded deeds. It behooves a man, therefore, to record his deed as soon as it is executed, lest some prior unrecorded deed beat him to the record. Whether this rule, which was announced before the adoption of the act of 1893, has been changed by that act is a question. Mr. Fallon (*Fallon on Conveyancing*, Par. 278) thinks it is not changed because of a statement by the Supreme Court in *Davey v. Ruffell*, 162 Pa. 443, that "The rule as it stood under the old law is the rule under the act of 1893, except as to the length of time allowed for recording." However, on the other hand, it must be remembered that the act of May 19, 1893, omits this clause contained in the act of 1775, viz: "unless such (prior) deed or conveyance be recorded as aforesaid, before the proving and recording of the deed or conveyance

under which a subsequent purchaser or mortgagee shall claim." This clause in the act of 1775 immediately followed the clause that provided that a prior unrecorded deed should be fraudulent and void as against a subsequent purchaser or mortgagee for valuable consideration. Since the decision of *Fries v. Null*, 154 Pa. 573, turned directly upon this clause which is omitted in the act of 1893, it would seem that the law as there stated has been changed and that a subsequent purchaser or mortgagee would now have the full ninety days in which to record. Still, the only recent case on the subject, *Gillespie v. Buffalo R. & P. Rwy. Co.*, 204 Pa. 107 (1902), reaffirms with approval the doctrine of *Fries v. Null*, supra, but even this recent case cannot be regarded as conclusively settling the question, since the facts of case show that the deeds there in question were recorded in 1883, or ten years before the adoption of the act of 1893. Consequently, until the question is finally settled good practice requires us to observe the rule of *Fries v. Null*, 154 Pa. 573, and to see to it that our deeds are recorded as soon as possible after execution lest they be defeated by the prior recording of an unrecorded prior deed.

#### 126. Time Within Which Mortgages Must be Recorded.

All mortgages except purchase money mortgages should be recorded immediately after execution, if they are to be a lien from that time. The Act of March 28, 1820 (7 Sm. L. 303), sets forth in effect that all mortgages and defeasible deeds in the nature of mortgages should have priority according to the date of recording the same without regard to the time of execution. And the recorder was required to indorse the time upon the mortgages or defeasible deeds when left for record and to number the same according to the time when left for record, and if two or more were left on the same day they should have priority, according to the time they were left for record, and no mortgages or defeasible deeds should be a lien until left for record. The meaning of this act requires but little explanation, and by it mortgages except purchase money mortgages, become a lien only from the time of recording. Title insurance companies have adopted a method of requiring the mortgages they are asked to insure to be recorded for two days prior to settlement. The searches are then brought down to cover these two days so as to disclose the fact if any other mortgage or

lien has crept in ahead of the one they insure. While under this act of 1820 an unrecorded mortgage is not a lien as to creditors or subsequent mortgagees or purchasers, it is nevertheless a good lien as against the mortgagor. This act further provides that no mortgage given for the purchase money of the land should be affected by the act if the same be recorded within sixty days. And if so recorded within the sixty days it becomes a lien from date of its execution. But as set forth in paragraph 88 if two purchase money mortgages executed on the same day are recorded within the sixty days, both are equal in lien unless one be made expressly subject to the other (see Paragraph 92).

#### 127. Defective Recording and Indexing. Result Thereof.

For recording to be effective it must be properly done. The instrument must not only be correctly transcribed in the proper book, but must be correctly indexed as well. The rule of law governing the question as to what book an instrument should be recorded has been stated as follows: "Where certain instruments of writing are not required by law to be recorded in a particular book, they may be recorded in any book kept by the recorder" (*Glading v. Frick*, 88 Pa. 460). Deeds and mortgages are required to be indexed in the deed book and mortgage book respectively. A list of all instruments which may be recorded and the acts of assembly relating thereto, will be found in paragraph 130 (*infra*). Before the Act of March 18, 1875, P. L. 32, a general index was not required by law and it was then held that "where an instrument was properly recorded but not indexed in a general index it was nevertheless effective, since the only index then required by law to be kept was index for each book" (*Schell v. Stein*, 76 Pa. 398). The Act of March 18, 1875, P. L. 32, however, requires the recorder to keep two general indexes, one for deeds and one for mortgages, and makes it his duty to index in the proper index every deed and mortgage left at his office for record. "Since this act, therefor, deeds and mortgages must be both indexed and transcribed properly, and failure to do either is such defective recording as to make it a nullity as to subsequent purchasers or mortgagees" (*Pyles v. Brown*, 189 Pa. 164).

Not only does omission to record and index constitute a defective record, but failure to index and transcribe *correctly* is equally defective. Thus where a mortgage was indexed and recorded under the name S. J. Marshall instead of L. J. Marshall the

Supreme Court said (*Prouty v. Marshall*, 225 Pa. 574 [1909]): "In this case the mortgage was neither recorded properly nor indexed properly; both recording and indexing were alike defective and each of the defects was fatal to the claim of the mortgagee." As a result of this development of the law a mortgagee or grantee ought to do more than merely leave the instrument for record, he ought to examine the record and see that no mistake has been made by the recorder, either in indexing or transcribing. Says the Supreme Court in the same case of *Prouty v. Marshall*, 225 Pa. 570: "The chief object to be obtained, by recording and indexing an instrument, affecting real estate, is to give notice of the incumbrance. It is therefore the duty of a person offering an instrument for record to see that it is properly recorded and properly indexed. If he fails to do so, he cannot shift the consequence upon an innocent purchaser."

The Recorder who makes a mistake in indexing or recording an instrument is liable for damages resulting therefrom and suit may be brought on his official bond (Act of March 18, 1875, P. L. 32, Sec. 2). To a certain extent this affords protection to a grantee or mortgagee whose instrument was improperly indexed, but since action must be commenced within seven years from the time the mistake was made (*Commonwealth v. Donnelly Estate*, 33 Pa. C. C. 601), the only complete protection is to follow the advice of the Supreme Court and personally examine both index and record to see that no mistake is made.

#### 128. Recording of Forged Instruments.

The recording of an instrument gives it no greater validity as far as execution is concerned than it had before. Thus where a forged deed was recorded one who buys relying on the record takes no title. As said by the Supreme Court (*Reck v. Clapp*, 1 Pennypacker 344): "Of course a purchaser who examines the records is protected by them as far as they can protect him, but he necessarily takes the risk of having the actual state of title correspond to that which appears of record." Reliance on a forged deed, recorded on an absolutely false certificate of acknowledgment may bring loss on him who so relies, but neither such deed nor such certificate appended to it can ever effect the owner of the property (*Smith v. Markland*, 223 Pa. 605).

**129. Method of Recording.**

The method of recording a deed or other instrument is to take or send the instrument to the recorder of deeds office. The recording fee is then paid, and receipt for the instrument is issued by the recorder or his clerk. The instrument is left there and when copied into the book and properly indexed is returned to the owner upon surrender of the receipt. The instrument is stamped recorded, the moment it is received by the recorder. Its recording dates from the time it is left with the recorder and not from the time it is copied into the book.

**130. What Other Instruments May Be Recorded.**

From time to time the legislature has passed acts providing that other instruments besides deeds and mortgages may be recorded and when they are recorded they have all the advantages incidents and force of a public record such as being constructive notice to the world, receivable in evidence without formal proof, etc.

The following instruments may be recorded:

Assignment of mortgages and letters of Attorney to satisfy mortgages, Act of April 9, 1849, P. L. 525, Sec. 14.

Assignments for benefit of creditors, Act of June 4, 1901, Sec. 10, P. L. 404.

Bankruptcy certificates, Act of May 2, 1907, P. L. 159. To be recorded in deed books and indexed as conveyances. The bankrupt as grantor and receiver or trustee (if any) as grantee.

Coroners' deeds, Act of March 14, 1846, P. L. 124, Sec. 1.

County commissioners' deeds, Act of April 5, 1849, P. L. 344, Sec. 2.

Deeds of sheriffs, coroners, marshals and treasurers, made in pursuance of decree of court, Act of March 14, 1846, P. L. 124, Sec. 1.

Deeds of trust where lands and tenements are conveyed, Act of May 6, 1854, P. L. 603, Sec. 1.

Discharges of commissioned or non-commissioned officers and privates, Act of April 8, 1868, P. L. 73, Sec. 1.

Dower, releases of, Act of May 17, 1866, P. L. 1085.

Election of husband or wife to take either under will or intestate laws, Act of April 21, 1911, P. L. 79.

Exemplification of deed embracing land in two counties recorded in one county may be recorded in the other county in which the land lies, Act of January 26, 1870, P. L. 13, Sec. 1.

Grant, bargain and sale, release or deed of conveyance or assurance of any lands, tenements or hereditaments, Act of December 14, 1854, P. L. (1855) 724, Sec. 3.

Letters of attorney to satisfy mortgages, Act of April 9, 1849, P. L. 525, Sec. 14.

Letters of attorney authorizing contracts, adjustments of accounts, sale of stocks and personal estate, receipt of moneys, discharges and acquittances of legacies or distributive shares, when executed out of state, Act of December 14, 1854, P. L. 724 (1855), Sec. 1. See also Act of May 17, 1866, P. L. 1085. Extended to affidavits before any officer of any state authorized to take affidavits, Act of August 10, 1864, P. L. 962.

Leases for more than twenty-one years, Act of March 18, 1775; 1 Smith's Laws 422, Sec. 3.

Marriage articles whereby title to land is affected are within the recording act, Lessee of Foster *v.* Whitehill, 2 Yeates 259.

Married women. All releases, contracts, letters of attorney and other instruments of writing which a married woman is or shall be authorized by law to make and execute without the joinder of her husband, and which have been or shall hereafter be so executed by her, may be recorded in the office for recording deeds in the proper county if the same shall have been acknowledged by her without her husband joining, or her signature thereto shall have been duly proved, Act of May 25, 1897, P. L. 83, Sec. 1.

Map or plan of lots, where one or all the owners have died, may, after approval by the court, be recorded. The act does not affect adversely persons not parties to the proceedings, Act of June 6, 1893, P. L. 329.

Map or plan of subdivision of lands into building lots, making it the duty of owner to record, Act of April 28, 1899, P. L. 123.

Mortgages or defeasible deeds in the nature thereof, Act of May 28, 1715; 1 Smith's Laws 94, Sec. 8. This section relates exclusively to mortgages and defeasible deeds, Burke *v.* Allen, 3 Yeates 351.

Marshals' deeds, Act of March 14, 1846, P. L. 124, Sec. 1.

Ordinance of any municipality vacating streets, lanes, alleys, Act of May 23, 1907, P. L. 223.

Patents granted by the commonwealth, Act of March 14, 1846, P. L. 124, Sec. 1. This act is constitutional, *Foster v. Gray*, 22 Pa. 9.

Powers of attorney to make sale, conveyance, mortgage or transfer of lands and tenements, Act of December 14, 1854, P. L. (1855) 724, Sec. 3.

Receipts for taxes on unseated lands duly acknowledged, Act of March 9, 1847, P. L. 278, Sec. 1.

Receipts for money paid for redemption of unseated lands, Act of April 25, 1850, P. L. 569, Sec. 33.

Receipts for instalments of mortgages, Act of March 31, 1823, P. L. 216, Sec. 2.

Release of recognizance or dower, Act of May 17, 1866, 1085 Sec. 1.

Releases of mortgage were authorized to be given by the Act of April 2, 1822, 7 Smith's Laws 551, Sec. 1, but apparently no provision was made for recording them. See Act of December 14, 1854, P. L. 724, Sec. 3. The act was intended for the benefit of terre-tenants or purchasers from the mortgagor and was not intended to interfere with the relative equities of different purchasers, *Mevey's Appeal*, 4 Pa. 80.

Release or other instrument in writing being evidence of the payment or satisfaction of any legacy charged on lands and releases to any executor, administrator, assignee, trustee or guardian duly executed before two witnesses and acknowledged, Act of April 15, 1828, P. L. 490, Sec. 1. See also Act of May 17, 1866, P. L. 1085, Sec. 1. Extended to releases executed out of state by Act of April 26th, 1850, P. L. 1169, Sec. 24. If not signed before two witnesses the release is not within the provision of the act, *Hellman v. Hellman*, 4 Rawle 440, but the Act of April 26, 1854, P. L. 501, Sec. 1, dispenses with seals or witnesses. Releases of warranties, covenants and liabilities contained in a deed are within the provisions of the act, *Susquehanna Coal Co. v. Quick*, 61 Pa. 339. Release not properly acknowledged is not entitled to record, *Powell's Appeal*, 98 Pa. 403.

Sheriff's deeds to be recorded in prothonotary's office, Act of May 24, 1893, P. L. 127, Sec. 1, may be recorded in recorder's office, Act of March 14, 1846, P. L. 124, Sec. 1.. But now, by Act of April 22, 1905, P. L. 265, Secs. 4, 5, 6, sheriff's deeds are *required* to be recorded in the Recorder of Deeds' Office, and indexed in the deed index with the name of the purchaser as



grantee and with the name of the defendant or party whose title was divested by the sale, as grantor. Sheriff's deeds need no longer be recorded in the Prothonotary's Office; the recorder of deeds must, however, give the prothonotary a certificate stating the place of record, which the prothonotary must note on the docket of the case.

Treasurer's deeds, Act of March 14, 1846, P. L. 124, Sec. 1.

Trustee deeds where lands and tenements are conveyed, Act of May 6, 1854, P. L. 603, Sec. 1.

## PART IV.

### Acquisition of Title by Descent and Will.\*

#### CHAPTER IX.

##### TITLE BY DESCENT.

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#### 131. Descent. Definition.

Descent or hereditary succession says Mitchell (Real Estate and Conveyancing in Pennsylvania), is the title whereby a man on the death of another, acquires his estate by right of representation as his heir. Blackstone (2 Blk. 11), states that the right of an heir to inherit was not a natural right, but a civil one established by long custom. But whether the right is natural or has arisen from the long acquiescence in a proper custom the right of a decedent's family to inherit is now established by law.

\*Title acquired by will is really a subdivision of title by purchase according to Blackstone (see Par. 12), but since the reason for maintaining the older classifications of Blackstone have long disappeared and as it seemed less confusing in the opinion of the author, to consider title derived from decedents together, title by will has been made a subdivision of title by descent and will be so treated.

At common law real estate descended to heir according to certain rules known as cannons of descent. They are set forth in detail and fully explained by Blackstone in his commentaries (2 Blk. 220). They have been so altered by statute that it would only be confusing to set them forth here. At the present time they are chiefly useful for the courts to refer to in construing the modern laws of descent of which they are the foundation. The modern rules of descent are provided in different jurisdictions by the legislature of the respective states and differ more or less in each jurisdiction. These modern rules of descent are usually termed the intestate laws.

### 132. Who May Inherit by Descent.

In general the intestate laws provide that only some one related to the decedent by consanguinity that is blood ties shall inherit by descent, in other words what is commonly called the "family" of the decedent. This means of course any one who is related by blood to the decedent whatever the degree. The widow although not related to the decedent by blood is under the intestate laws of practically every jurisdiction also allowed to inherit to some extent. The relationship between husband and wife is termed affinity as distinguished from consanguinity which means relationship by blood. So also a man's blood relations are called his kin or kindred while his relationship by marriage should be properly termed his connections (Michell 285 Note).

(a.) *Natural Heirs*.—By natural heirs we mean of course all blood relatives such as children, nephews, nieces, uncles, aunts, cousins, etc. They may all inherit under the intestate laws in the order therein set forth (See Par. 134, *infra*).

(b.) *Illegitimates*.—At common law an illegitimate child or a bastard child was one born out of wedlock could not inherit even from his mother, unless he was made legitimate by act of Parliament. In no other way could he be made legitimate, not even by marriage of the mother and father after his birth. In Pennsylvania as in every other jurisdiction the harshness of this common law rule has been relaxed, and to-day the marriage and cohabitation of the father and mother at any time after the birth legitimates the child (Act of May 14, 1857, P. L. 507).

If the bastard is not legitimated by marriage of his parents he is nevertheless now permitted to inherit in Pennsylvania from his mother (though not from the father) by Act of April 27, 1855,

P. L. 368, which provides "Illegitimate children shall take and be known by the name of their mother, and they and their mother shall respectively have capacity to take and inherit from each other, personal estate as next of kin and real estate as heirs in fee simple; and as respects said real and personal estates so taken and inherited to transmit the same according to the intestate laws of this state." This act while it does not legitimate bastards gives them the capacity to inherit from their mother and the right to take the mother's name. Later by various acts culminating finally in the Act of July 10, 1901, P. L. 639, the illegitimate child was given the full capacity to inherit from the *mother personal property* to the same extent as any legitimate child, and to inherit real estate to the same extent as any legitimate child of the *half blood* (see Par. 136 hereinafter), but cautions the Act of March 26, 1903, P. L. 70. This act of 1901 only means to give the illegitimate child right to inherit the property of its mother and not of its father.

In considering the rights of illegitimates to inherit it must be remembered that the laws of any state have no extra-territorial effect and that the law of that state governs wherein the land lies.

(c.) *Adopted Children*.—By act of assembly in Pennsylvania proceedings are provided whereby children may be adopted (see Act of May 19, 1887, P. L. 125, and Act of April 22, 1905, P. L. 298), by petition to the court of the proper county, and see the case of Evans' Estate, 47 Pa. Super. 196, which holds that adoption may still be done by deed if properly executed and recorded. Adults may also be adopted, see Act of June 1, 1911, P. L. 539. When properly adopted the adopted child has all the capacity and right to inherit both real and personal property as a natural born child has. In other words by act (Act of April 13, 1887, P. L. 53) of assembly the adopted child is translated into a natural born child as far as the right to inherit is concerned.

### 133. Lineal Heirs and Collateral Heirs.

Heirs inherit as the law provides and in the order the law provides. Heirs are divided into two lines or classes. Lineals and collaterals. Lineal heirs are such as are descended one from the other in a direct line, as between a man and his son his grandson, etc. In ascertaining the nearness of relationship or consanguinity each generation counts one degree. Thus the son is re-

moved one degree from his father and two from his grandfather.

*Collaterals* are such who are descended from the same stock or common ancestor, but do not descend one from the other. Thus brothers are collaterals because they are not descended one from the other, but are descended from the same common ancestor, to wit, their father. So also cousins are collaterals. In computing the nearness of relationship or consanguinity the method now adopted by law is to count from one collateral up to the common ancestor and then down to the other. This is known as the civil law method. If the reader desires to have a fuller exposition of the method of computing consanguinity he is referred to the 2 book of Blackstone's Commentaries Ch. XIV, p. 199, where a most interesting, full and plain explanation replete with illustrations is made by the learned author. But observe that the common law method of computing the degree of collaterals is no longer used.

#### 134. Intestate Laws of Pennsylvania. Order of Inheritance.

The order in which heirs shall inherit in Pennsylvania is regulated by the Act of April 8, 1833, P. L. 315 and its supplements, commonly called the intestate laws. These acts are here set forth in full and then a synopsis of them added so that they may be more clearly understood.

SECTION 1. The real and personal estate of a decedent, whether male or female, remaining after payment of all just debts and legal charges, which shall not have been sold or disposed of by will, or otherwise limited by marriage settlement, shall be divided and enjoined (enjoyed) as follows, viz.:

(1.) Where such intestate shall leave a widow and issue, the widow shall be entitled to one-third part of the real estate for the term of her life, and to one-third part of the personal estate absolutely.

(2.) Where such intestate shall leave a widow and collateral heirs, or other kindred, but no issue, such widow shall be entitled to real or personal property estate, or both to the aggregate value of Five Thousand (\$5,000.00) Dollars in addition to the widow's exemption as allowed by law; and if such estate shall exceed in value the sum of Five Thousand (\$5,000.00) Dollars, the widow shall be entitled to such sum of Five Thousand (\$5,000.00) Dollars absolutely to be chosen by her from the real or personal estate or both and in addition there to shall

be entitled to one-half part of the remaining real estate, for the term of her life and to one-half part of the remaining personal estate absolutely.\* Provided that the procedure for appraising the setting apart the said Five Thousand (\$5,000.00) Dollars in value of the property shall be the same as provided in Section five of the Act of Assembly approved April 14, 1851, relating to widow's exemptions.†

(3.) When such intestate shall leave a husband, the real estate shall descend and pass as now provided by law, saving to the husband his right as tenant by the curtesy which shall take place, although there be no issue of the marriage, in all cases where the issue, if any, would have inherited. If such married woman shall leave no children nor descendants of such living, the husband shall be entitled to such personal property absolutely. If such married woman shall leave a child or children living, her personal estate shall be divided amongst the husband and such child or children, share and share alike; if any such child or children being dead shall have left issue such issue shall be entitled to the share of the parent.‡

SECTION 2. Subject to the estates and interests hereinbefore given to the widow or surviving husband, if any, the real estate of such intestate shall descend to, and the personal estate not otherwise hereinbefore disposed of, shall be distributed among his issue, according to the following rules and order of succession, viz:—

(1.) If such intestate shall leave children, but no other descendant, being the issue of a deceased child, the estate shall descend to and be distributed among such children.

(2.) If such intestate shall leave grandchildren, but no child or other descendant, being the issue of a deceased grandchild, the estate shall descend to and be distributed among such grandchildren.

(3.) If such intestate shall leave descendants in any other degree of consanguinity, however remote from him, and all in the same degree of consanguinity to him, the estate shall descend to and be distributed among such descendants.

\*This section is set forth as amended by the Act of April 1, 1909, P. L. 87.

†This act is constitutional, *Guentheor's Estate*, 235 Pa. 67.

‡This section is set forth as amended by the Act of April 1, 1909, P. L. 87.

(4.) If such intestate shall leave descendants in different degrees of consanguinity to him, the more remote of them being the issue of a deceased child, grandchild or other descendant, the estate shall descend to and be distributed among them as follows, viz:

(a.) Each of the children of such intestates shall receive such share as such child would have received, if all the children of the intestate who shall then be dead, leaving issue, had been living at the death of the intestate.

(b.) Each of the grandchildren, if there shall be no children, in like manner, shall receive such share as he or she would have received if all the other grandchildren who shall then be dead, leaving issue, had been living at the death of the intestate, and so in like manner to the remotest degree.

(c.) In every such case the issue of such deceased child, grandchild or other descendant, shall take, by representation of their parents respectively, such share only as would have descended to such parent, if they had been living at the death of the intestate.

SECTION 3. In default of issue as aforesaid, and subject also as aforesaid to the estates and interests hereinbefore given to the widow or surviving husband, if any, the real estate shall go to the father and mother of such intestate, during their joint lives and the life of the survivor of them, and the personal estate not otherwise hereinbefore disposed of shall be vested in them absolutely, or if either the father or mother be dead at the time of the death of the intestate, the parent surviving such intestate shall enjoy such real estate during his or her life, and such personal estate absolutely.

SECTION 4. In default of issue as aforesaid, and subject to the estates and interests hereinbefore given to the widow or surviving husband, father and mother, of the intestate, if any, the real estate shall descend to, and the personal estate, not otherwise hereinbefore disposed of, shall be distributed among the collateral heirs and kindred of such intestate, according to the following rules and order of succession, viz:

(1.) If such intestate shall leave brothers and sisters, or either, of the whole blood, and no nephew or niece, being the issue of a deceased brother or sister of the whole blood, the real estate shall descend to and vest in such brothers and sisters.

(2.) If such intestate shall leave neither brother nor sister of the whole blood, but nephews, or nieces, being the children of such deceased brother or sister, the real estate shall descend to and vest in such nephews and nieces.

(3.) If such intestate shall leave brothers or sisters of the whole blood, and also nephews or nieces, being the children of any such deceased brother or sister, the real estate shall descend to and vest in such brothers and sisters and nephews and nieces, as follows, viz: Every such brother and sister shall receive such share as he or she would have received, if all the brothers and sisters who shall then be dead, leaving children, had been living at the death of the intestate, and such nephews and nieces shall take by representation of their parents respectively, such share only as would have descended to such parents if they had been living at the death of the intestate.

(4.) If such intestate shall leave neither brother nor sister of the whole blood, nor any nephew or niece, being the child of such deceased brother or sister, the real estate shall descend to and vest in the next of kin of such intestate, being the descendants of his brothers and sisters of the whole blood.

(5.) The personal estate of such intestate, not otherwise hereinbefore disposed of, shall, in the several cases mentioned in this section, be distributed among the brothers and sisters of the intestate, and their issue, in like manner in each of the said cases, as is provided for the descent and division of the real estate of the intestate, but without any distinction of blood.

SECTION 5. In default of issue, and brothers and sisters of the whole blood and their descendants as aforesaid, and subject to the estates and interests hereinbefore given to the widow or surviving husband, if any, the real estate shall go to and be vested in the father or mother of the intestate, or, if both be living at the time of his death, in the father and mother for such estate as the said intestate had therein.

SECTION 6. In default of issue and brothers and sisters of the whole blood and their descendants, and also of father and mother, competent by this act to take an estate of inheritance therein, the real estate of such intestate, subject to the life estates hereinbefore given, if any, shall descend to and be vested in the brothers and sisters of the half-blood of the intestate, and their issue, in like manner, respectively, as is hereinbefore pro-



vided for the cases of brothers and sisters of the whole blood, and their issue.

SECTION 7. In default of all persons hereinbefore described, the real and personal estate of the intestate shall descend to and be distributed among the next of kin to such intestate.

SECTION 8. Provided, That there shall be no representation admitted amongst collaterals, after brothers' and sisters' children.

SECTION 9. Among collaterals, when by existing laws entitled to inherit, the real and personal estate shall descend and be distributed among the grandchildren of brothers and sisters, and the children of uncles and aunts, by representation; such descendants taking equally among them such share as their parent would have taken, if living (27 April, 1855, P. L. 368, Sec. 2).

SECTION 10. Whenever by the provisions of the intestate laws of this commonwealth it is directed that the real and personal estate shall descend to and be distributed among the next of kin to such intestate, and such next of kin shall be one or more than one grand-parent of such intestate, and there shall be living, at the time of the decease of such intestate, children or other descendants of any deceased grand-parent, then the children or other descendants of any such deceased grand-parent shall represent the grand-parent so deceased, and shall take the share of the real or personal estate to which such deceased grand-parent would be entitled if living.

The issue of any such deceased grand-parent shall take according to the following rules of succession, namely:

(1.) If there be only children of such deceased grand-parent, the share of such deceased grand-parent shall descend to and be distributed among such children.

(2.) If there be grandchildren of such deceased grand-parent and no other descendants and no child, the share of such deceased grand-parent shall descend to and be distributed among such grandchildren.

(3.) If there be descendants of such deceased grand-parent in any other degree however remote from him, and all in the same degree of consanguinity to him, the share of such deceased grand-parent shall descend to and be distributed among such descendants.

(4.) If there should be descendants of such deceased grand-parent in different degrees of consanguinity to him, the more

remote of them being the issue of a deceased child, grandchild or other descendant, the share of such deceased grand-parent, shall descend to and be distributed among them as follows, namely :

(a.) Each of the children of such deceased grand-parent shall receive such share as such child would have received if all the children of such deceased grand-parent, who shall then be dead leaving issue, had been living at the death of the intestate.

(b.) Each of the grandchildren, if there shall be no children of such deceased grand-parent, in like manner shall receive such share as he or she would have received if all the other grandchildren, who shall then be dead, leaving issue, had been living at the death of the intestate, and so in like manner to the remotest degree.

(c.) In every such case, the issue of such deceased child, grandchild or other descendant of such deceased grand-parent shall take, by representation of their parents respectively, such share only as would have descended to such parents, if they had been living at the death of the intestate.

SECTION 11. Provided also, No person, who is not of the blood of the ancestors or other relations, from whom any real estate descended, or by whom it was given or devised to the intestate, shall, in any of the cases before mentioned, take any estate of inheritance therein, but such real estate, subject to such life estates as may be in existence by virtue of this act, shall pass to and vest in such other persons as would be entitled by this act, if the persons not of the blood of such ancestor or other relation had never existed, or were dead at the decease of the intestate.

SECTION 12. In default of known heirs or kindred, competent as aforesaid, the real estate of such intestate shall be vested in his widow, or, if such intestate were a married woman, in her surviving husband, for such estate as the intestate had therein, and in such case the widow shall be entitled to the whole of the personal estate absolutely.

SECTION 13. And whereas, it is the true intent and meaning of this act that the heir at common law shall not take, in any case, to the exclusion of other heirs and kindred standing in the same degree of consanguinity with him to the intestate, it is hereby declared, that, in every case which may arise, not expressly provided for by this act, the real as well as the personal

estate of an intestate shall pass to and be enjoyed by the next of kin of such intestate, without regard to the ancestor or other relation from whom such estate may have come.

SECTION 14. In default of all such known heirs or kindred, widow or surviving husband as aforesaid, the real and personal estate of such intestate shall go to and be vested in the commonwealth by escheat.

SECTION 15. Descendants and relatives of an intestate, begotten before his death and born thereafter, shall in all cases inherit and take in like manner as if they had been born in the lifetime of such intestate.

SECTION 16. Wherever, by the provisions of this act, it is directed that real or personal estate shall descend to or be distributed among several persons, whether lineal or collateral heirs or kindred, standing in the same degree of consanguinity to the intestate, if there shall be only one of such degree, he shall take the whole of such estate, and if there be more than one, they shall take in equal shares, and, if real estate, shall hold the same as tenants in common.

SECTION 17. The shares of the estate directed by this act to be allotted to the widow, shall be in lieu and full satisfaction of her dower at common law.

SECTION 18. If any child of an intestate shall have any estate by settlement of such intestate, or shall have been advanced by him in his lifetime, either in real or personal estate, to an amount of value equal to the share which shall be allotted to each of the other children of such intestate, such child shall have no share of the real or personal estate of such intestate; and if such settlement or advancement be to an amount or value less than the share to which he would otherwise be entitled, if no such advancement had been made, then so much only of the real and personal estate of such intestate shall be allotted to such child, as shall make the estate of all the said children to be equal, as near as can be estimated.

SECTION 19. The provisions of this act, relative to descent and distribution of real and personal estate among the descendants and collateral relations of intestates, shall be construed to mean such persons only as may have been born in lawful wedlock.

SECTION 20. The residue of the proceeds of the sale of any real estate of an intestate, made by authority of law for the

payment of debts, shall vest in the persons entitled by this act to such real estate, in such proportions, and for the like interests, respectively, as they may have had in such real estate.

SECTION 21. All such of the intestate's relations and persons concerned, who shall not lay legal claim to their respective shares, within seven years after the decease of the intestate, shall be debarred from the same forever: Provided, That if any such relation or person shall, at the time of the decease of the intestate, be within the age of twenty-one years, or a married woman, he or she shall be entitled to receive and recover the same, if he or she shall lay legal claim thereto, within seven years after coming to full age or discoveriture.

SECTION 22. Nothing in this act contained, relative to a distribution of personal estate among kindred, shall be construed to extend the personal estate of an intestate, whose domicile, at the time of his death, was out of this commonwealth.

SECTION 23. This act shall take effect from and after the first day of October next, and so much of any act of assembly as is hereby altered or supplied is repealed from and after said day, except so far as may be necessary to complete the settlement and disposition of the estate of any person who may have died before that time.

### 135. Synopsis of Intestate Laws.

In interpreting the intestate laws, two general rules should be carefully remembered.

1. Lineal descendants in the descending series inherit equally, no distinction being made between males and females. Thus, the property of the father is inherited by his lineal descendants, say his children equally.

2. Lineal heirs in the ascending series will take in preference to the collateral kindred. If the decedent dies without issue, his parents get the estate in preference to his uncle or cousins. Before setting forth the synopsis one final word as to the meaning of the terms, *per capita* and *per stirpes*. These terms can be better understood by illustration than by definition. Suppose a man dies intestate who had originally two children one of which predeceased him so that at his death there survived him one child and two grand-children of his deceased child. The son takes one-half of the estate, *i. e.* he takes *per capita*; the grandchildren take each half of what their parent would have received; that is one-

fourth of the whole; they take per stirpes; *i. e.* they represent their father and divide what he would have gotten.

## SYNOPSIS.

## I.

WHERE A PERSON DIES UNMARRIED OR A WIDOW OR WIDOWER  
WITHOUT CHILDREN.

The Real Estate descends:

(a.) To the father and mother and survivor of them for life *i. e.* by entirety (see Par. 5, Entirety).

(b.) At parents death to the decedent's brothers and sisters and children of such as may be dead who take per stirpes.

(c.) If no brothers and sisters, then to the nephews and nieces of the whole blood per capita; *i. e.* in equal shares.

(d.) In absence of brothers, sisters, nephews, &c., or other descendants of the whole blood, the estate goes to their next of kin. (This means next of kin who is descended from the deceased brothers and sisters.)

(e.) If there be no next of kin then to father and mother and survivor absolutely.

(f.) If neither of above classes be able to take then it goes to half blood in the order above set forth.

(g.) If neither be living then to the next of kin. (This means general next of kin.)

(h.) If none then it escheats to commonwealth.

## THE PERSONAL PROPERTY DESCENDS:

(a.) To mother and father absolutely.

(b.) If parents are dead the personal property is distributed as the real estate above set forth except that there is no distinction as to the half blood.

## II.

WHERE DECEDENT IS A WIDOW OR WIDOWER LEAVING CHILDREN OR  
LINEAL DESCENDANTS.

## THE REAL ESTATE AND PERSONAL PROPERTY DESCENDS:

(a.) To the lineal descendants who if they stand in the same degree take equally per capita, *e. g.* as if all be children or all be grandchildren.

(b.) But if lineals be of different degrees they take by representation (*per stirpes*). *E. g.* if some be children and others be grandchildren, the grandchildren do not take equally with the children, but divide their parents' share.

### III.

#### MARRIED MAN LEAVING WIFE SURVIVING HIM.

##### HIS REAL ESTATE AND PERSONAL PROPERTY DESCENDS:

1. If no issue (*i. e.* children).

(a.) Five Thousand (\$5,000.00) Dollars worth thereof out of either real or personal property or both to the widow absolutely. And one-half of the personal property remaining, if any, absolutely. And one-half of the real estate, if any, to the wife for life. At death of wife said one-half of real estate goes as does the other half in the manner outlined in division I.

2. If he dies leaving issue (*i. e.* children).

(a.) His personal property descends one-third to the wife absolutely, the remainder to his children.

(b.) His real estate goes one-third to his wife for life, the remainder to his children, &c., as set forth in Division II. At the wife's death the one-third goes also to the children, &c., as set forth in Division II.

3. If no children and no known heirs or kindred whatever, then the entire real estate goes to the wife absolutely.

### IV.

#### MARRIED WOMAN LEAVING HUSBAND.

1. If no issue (*i. e.* children).

(a.) All of her real estate goes to the husband for life and at his death it goes as outlined in Division I.

(b.) All of her personal property goes to the husband absolutely.

2. If issue (*i. e.* children).

(a.) All the real estate to husband for life. After his death it descends to children and their issue as outlined in Division II.

(b.) Personal property descends to the husband and children absolutely, share and share alike. That is, the husband takes a

child's share so if there be one child the husband gets a half and the child a half, etc. If any child dies leaving issue the issue takes the parents share (per stirpes).

### 136. Whole Blood and Half Blood.

Relationship by the whole blood is where two persons are descended from the same pair of ancestors as where two persons have the same grandfather and same grandmother. Relationship by the half blood is where two or more persons have only one common ancestor; as where they are descended from the same grandfather, but from different grandmothers.

By the intestate act of Pennsylvania (See Section 5, page 174) collateral heirs who are of the half blood are postponed until all of the whole blood are extinguished. But observe this distinction as to whole and half blood exists only as to real estate and not as to personal property.

### 137. Advancements.

The intestate laws provide "that if any child of an intestate shall have any estate by settlement of such intestate, or shall have been advanced by him in his life time, either in real or personal estate, to the amount or value equal to the share which shall be allotted to each of the other children of such intestate, such child shall have no share of the real or personal estate of such intestate" (Act of April 8, 1833, Sec. 16, P. L. 315 (Sec. 18, Par. 134 supra). The intention of the act is plainly that all children should share equally. Thus advances made to children bar them from participating in the estate to the amount of the advancement received. An advancement is an irrevocable gift by a parent to a child of the whole or part of what it is supposed the child will be entitled to on the death of the parent, who afterwards died intestate (Eshleman's Appeal, 74 Pa. 42). But to make a gift an advancement it must have been intended as such when made (Dare's Estate, 9 D. R. 431).

### 138. Recital of Deed of One Inheriting by Descent.

When the owner of real estate dies the record at the recorder of deeds office still shows title in the decedent's name because the heir gains title not by virtue of deed, but by mere operation of law. When therefore the heir conveys the land he should show by deed how he gained title in order to fill up the gap existing on

the record between his grantee and his ancestor. This is done by the recital. The following is a form of recital to be inserted in a deed drawn for a conveyance from a grantor who has derived his title by operation of the intestate laws:

BEING the same premises which Adam Smith by Indenture bearing date the 23rd day of February, 1896 and recorded in the Office for the Recording of Deeds in and for the City and County of Philadelphia in Deed Book J. V. No. 23, Page 322, &c., granted and conveyed to Samuel Moore in fee.

AND the said Samuel Moore being seised of said premises departed this life intestate on the Fifteenth day of September, A. D. 1912, leaving surviving him as sole heir Robert Moore to whom said premises decended in fee.

#### SECTION II.

##### ESTATE BY CURTESY.

#### 139. Estate by Curtesy.

This estate has already been defined (See Par. 3). It is the right of the husband to enjoy a life estate in all his wife's real estate at her death. At common law the husband was not entitled to his curtesy unless there was a child born of the marriage, but this condition as well as others stipulated by the common law are no longer in force in Pennsylvania, so that the present day estate by curtesy is somewhat different from the common law estate. By marriage alone, whether a child be born thereof or not, the husband becomes vested in his estate by curtesy, which becomes consummate upon his wife's death (Act of April 11, 1848, P. L. 536, Sec. 10; see also Act of May 4, 1855, P. L. 430). His interest is an absolute one and can only be divested once it vests by his own acts. It subsists and follows such land which his wife may have conveyed without his joining in the deed. While the estate vests the moment of marriage, enjoyment thereof is postponed until the death of the wife. Nor since the Act of 1850 (Act of April 22, 1850, Sec. 20, P. L. 553) can the creditors of the husband levy upon and sell this interest during the lifetime of the wife. Nor is a judgment against the husband during the life of the wife a lien against his curtesy (Act of April 1, 1863, Sec. 1, P. L. 212).



**140. Against What Land Curtesy Attaches.**

In general it may be stated that a husband's right of curtesy attaches to all land to which his wife has title at time of marriage or to which she acquires title thereafter, whether by deed, descent, will or otherwise. There is, however, this exception, such land as may be expressly devised to her by will or conveyed by deed of trust wherein the instrument stipulates that the land is to be for her sole and separate use, free from control of her husband and specifically shows the intent of the testator or grantor, that the husband's right of curtesy should be barred.

**141. How Curtesy May be Barred.**

The husband's estate of curtesy is absolute and exists unless barred by the husband's own acts in any of the following methods.

(a.) *By Voluntary Joinder in a Deed of Conveyance.*—Should the husband join in his wife's deed to convey away her land his curtesy is barred. Mere consent given by husband to his wife to sell does not bar him; he must join in the deed. If he, however, signs the agreement of sale with his wife he can be compelled to sign the deed.

(b.) *By Divorce A. V. M.*—Divorces are of two kinds: a vinculo matrimonii, usually abbreviated A. V. M., which means literally from the bonds of matrimony. It is the so-called absolute divorce and entitles both parties to re-marry. The other is a mensa et thoro, meaning literally from bed and board, which is really in effect a legal separation and does not entitle either party to re-marry. The former, viz: the absolute divorce, bars the husband's curtesy, the latter does not (Schock's Appeal, 33 Pa. 351).

(c.) *Desertion and Non-support by Husband.*—Under the Act of May 4, 1855 (P. L. 430), a husband who has for a period of one year or upwards before his wife's death wilfully neglected or refused to support her or for that period or upward wilfully and maliciously deserted her shall have no claim to her real or personal estate after her decease, whether by the curtesy or under the intestate laws of Pennsylvania. The burden is on the husband who has left his wife, to justify his desertion and to do so he must show such cause as would have entitled him to a decree of divorce A. V. M. against her (Hahn v. Bealor, 132 Pa. 242; Weller v. Weller, 213 Pa. 265).

(d.) *By Voluntary Agreement or Release.*—A husband may agree in writing either before marriage or thereafter to forego all claims of curtesy against his wife's estate. Such agreement when properly executed is valid and bars his curtesy (*McBride's Estate*, 81 Pa. 303; *Singer's Estate*, 233 Pa. 55).

(e.) *By Sheriff's Sale.*—A sheriff's sale of the wife's real estate on a judgment confessed by or obtained against her bars the husband's curtesy (*Wells v. Bunnell*, 160 Pa. 460). But if the judgment is collusive or a mere fraudulent scheme to deprive either husband or wife of their interests it will be set aside (*Waterhouse v. Waterhouse*, 206 Pa. 433).

### SECTION III.

#### DOWER.

##### 142. Dower.

By dower we mean a life estate which the law gives to the widow in a third of land and tenements of her husband of which he was seised at any time during the marriage. This also is an old common law estate that still survives, although it, like curtesy, has been changed in many respects. Common law dower is taken away in all cases where the husband dies intestate, seised of lands and in its place a statutory provision consisting partly of real and partly of personal estate is given to the widow by the intestate laws (See Act of April 8, 1833, P. L. 249, Sec. 11, and amendment thereto by act of 1909 [supra]). By this provision, as is set forth before (Par. 134, Sec. 1, Clause 1-2-3), the widow, if there be children, is given one-third of personal property absolutely and one-third of the real estate for life. If no children, the widow is given \$5,000.00 absolutely out of real or personal property or out of both together, with one-half of the remaining personal property absolutely and one-half of the remaining real estate for life. This provision the law specifically says shall be in lieu of a dower (See Par. 134, Sec. 17).

##### 143. Common Law Dower Still Exists During Husband's Life.

It should be remembered that the statute in Pennsylvania does not abolish dower, but makes the provision above referred to in lieu of dower. Now, as the wife only becomes entitled to that provision upon her husband's death, it follows that the interest which she holds during his lifetime is still the old common

law dower of one-third. But upon his death she receives by statute the provision above referred to in lieu thereof. Suppose, therefore, a husband conveys land without his wife joining in the deed; the grantee takes title to the land subject to the dower right of the wife. Upon the husband's death she can bring her action against the grantee or any subsequent holder of the land to recover her common law dower right. This is the sole instance in which it can be said common law dower still exists in Pennsylvania.

#### 144. When the Dower Right of Wife Vests.

Just as in the case of tenant by curtesy the dower right of a wife vests from the instant of marriage. From that time on she has a one-third interest in the husband's land or such as he may acquire thereafter; an interest which can only be released by one of the methods set out in the next paragraph.

#### 145. How Dower May be Barred.

Dower may be barred or forfeited by various acts of a wife just as we have seen a husband's curtesy may be barred. These methods are:—

(a.) *By Voluntary Joinder in a Deed of Husband.*—If the wife joins in a husband's deed of conveyance she thereby is held to have signed away or relinquished her dower rights. Mere consent to the transaction does not bar her rights unless she actually signs or agrees to do so by signing the agreement of sale.

(b.) *Divorce A. V. M.*—A divorce A. V. M. (See Par. 141 b), *i. e.*, an absolute divorce, also bars her right (Richardson's Estate, 132 Pa. 375; *Miltimore v. Miltimore*, 40 Pa. 151). But not a mere separation or even desertion (see c. f., *infra*).

(c.) *Elopement and Adultery of the Wife.*—Should the wife elope from the husband and commit adultery her dower rights are barred (*Lewis v. Parrott*, 37 W. N. C. 330). Though if the husband deserts her first her subsequent adultery will not bar her dower (*Reel v. Elder*, 62 Pa. 308). Mere desertion by wife does not bar dower nor will mere adultery bar dower, both must combine (*Helsop v. Helsop*, 82 Pa. 537).

(d.) *Devise in Lieu of Dower.*—Where a husband devises a portion of his property by will to his widow and she accepts said provision of the will, it is presumed to be in lieu of dower.

She may, however, refuse the provision made in the will and elect to take under the intestate laws instead (See *Right to Take v. Will*, Par. 164, *infra*).

(e.) *Ante Nuptial Agreement*.—An ante nuptial agreement is one made by the parties about to marry in which one or the other releases his or her interest in the other's estate. When such an agreement releases dower it is barred.

(f.) *Release and Agreements*.—The wife may by writing or agreement release her dower interest (*Singer's Estate*, 233 Pa. 55). So, too, agreement or deed of separation may contain release of dower and operate to bar it (*Fennell's Estate*, 207, Pa. 309). Such deeds of separation releasing dower may be and should be recorded. Merely living separate and apart does not operate to abrogate dower, its release must be specifically agreed to in writing (*Walsh v. Kelly*, 34 Pa. 84; *Kaiser's Estate*, 199 Pa. 269).

(g.) *Sheriff's Sale*.—Where land is sold out under foreclosure of mortgage or under the judgment obtained by creditor against the husband, the dower is barred (*Scott v. Crosdale*, 2 Dallas 127; *Directors of Poor v. Royer*, 43 Pa. 146). But where the mortgage is made or judgment permitted to be obtained by connivance of husband with intent to bar widow, the court will declare it to be a fraud and preserve the wife's rights (*Killinger v. Reidenhauer*, 6 S. & R. 531; *Waterhouse v. Waterhouse*, 206 Pa. 433).

(h.) *Sale by Orphan's Court for Payment of Debts*.—Where land of decedent is sold by orphans' court for payment of decedent's debts dower is also barred (*Thomas v. Harris*, 43 Pa. 23).

#### 146. Bankruptcy of Husband Does Not Bar Dower.

Bankruptcy of husband, and the consequent sale of his real estate by the receiver or trustee in bankruptcy does not bar dower (*Porter v. Lazear*, 109 U. S. 84), nor does a voluntary or involuntary assignment for benefit of creditors under the state acts bar dower (*Mills v. Ritter*, 197 Pa. 353; *McFadden v. McFadden*, 32 Pa. Super. 536).

## CHAPTER X.

### ESCHEAT.

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#### **147. Escheat. Definition.**

Escheat at common law was the term used to signify the reverter of lands held in fee to the over lord by reason of failure of heirs to inherit. More modernly, escheat means the reverter of property to the commonwealth or sovereign state because of absence of kin or kindred. It is, therefore, a method by which the commonwealth acquires title. The Pennsylvania Intestate laws (See Sec. 14, Par. 134, *supra*) provide that in default of all such known heirs or kindred, widow or surviving husband as aforesaid, the real and personal estate shall go to and be vested in the Commonwealth by escheat. Escheat is not limited to the single instance of an intestate dying without kin, but exists in other cases where a person or corporation forbidden to do so attempts to hold land.

#### **148. Escheat of Lands Held by Aliens.**

In considering the capacity of persons to take, hold and convey title to land we found that the capacity of aliens was limited to 5,000 acres in quantity and \$20,000 in net annual value (See Par. 28). Should he acquire more, the excess escheats to the State. Where an alien sells such land before escheat proceedings are commenced a good indefeasible title vests in the purchaser (Act of April 6, 1859, P. L. 383, Sec. 1).

**149. Escheat of Land Held by Charities.**

So also religious and charitable institutions are limited in the amount of land and the purposes for which they may hold it. Religious, literary and charitable societies may not hold real estate to a greater amount than a yearly value of \$30,000.00 without express legislative sanction (Act of April 26, 1855, P. L. 329, amended by Act of April 22, 1889, P. L. 42). Here, again, any land held in violation of the limitations escheats to the State.

**150. Escheat of Land Held by Trustees.**

Where the cestui que trust has been unknown and absent for seven years and still remains unknown, all property in the custody of the trustee may be escheated to the Commonwealth as in other cases (Act of May 11, 1911, Sec. 1, P. L. 281).

**151. Escheat of Land Held by Corporations.**

We have also seen that foreign corporations and to a less extent domestic corporations are limited in their right to hold land (See Par. 38 and 39). Any land acquired by them in violation of their restrictions escheats to the State.

**152. Escheat Not Complete Until Commonwealth Begins Proceedings.**

At common law when property escheated title vested in the overlord without more. True it is that he had often to commence proceedings to eject the occupiers or to gain possession, but title vested in him absolutely upon the mere happening of the event. But this is not true under the escheat law in Pennsylvania. Title of the Commonwealth to escheated property is not perfect until it is determined by inquest that there are no heirs or known kindred of the intestate (*Crawford v. Com.*, 1 Watts 485; *Mitchell on Real Estate* 316). So, also, until the Commonwealth commences proceedings to escheat the title to escheatable land held by aliens, religious societies or corporations, its title does not become perfect. But no amount of delay on the part of the Commonwealth to assert its title can inure to the benefit of the alien, religious society or corporation that holds the property in violation of its limitation. However, in the case of escheat for failure of heirs there is a limitation imposed on the Commonwealth by the Act of May 2, 1889, P. L. 66, which provides that the Commonwealth must commence escheat pro-

ceedings within twenty-one years after the decease of intestate dying without heirs, or be forever barred.

**153. Bona Fide Purchasers Before Escheat Gain Good Title.**

The effect of this development of the escheat doctrine in Pennsylvania was that if in order to perfect its title it was necessary for the Commonwealth to begin proceedings and if before such proceedings were commenced, the land in question was conveyed to a bona fide purchaser for value without notice, such purchaser ought to have a good title as against the Commonwealth. This was the position eventually taken by the legislature of Pennsylvania, which, after passing laws from time to time confirming title of innocent purchasers gained before escheat was commenced, passed the very broad Act of June 24, 1895 (P. L. 264, Sec. 1), which provided, section 1, that "Where any conveyances of real estate in this Commonwealth have been or *shall be* made by an alien or any foreign corporation or corporations of another or of this State to any citizen of the United States or to any corporation chartered under the law of this Commonwealth, and authorized to hold real estate, before any inquisition shall have been taken against the real estate so held to escheat the same, such citizens or corporation, grantee as aforesaid, shall hold and may convey such title and estate indefeasible as to any right of escheat in this Commonwealth by reason of such estate having been held by an alien or corporation not authorized to hold the same by the laws of this Commonwealth."

**154. Proceedings to Escheat.**

Escheat proceedings may be begun by anyone who knows of escheatable property informing the Commonwealth. This is done by notifying the auditor general in writing, signed and witnessed by two subscribing witnesses. The informer, as he is known, receives one-fourth of the proceeds of the real or personal property escheated, less costs and expenses. He must, however, file a bond to refund said one-fourth share if a claimant subsequently appears and establishes his claim within the time limited (Act of May 11, A. D. 1911, Sec. 4. P. L. 286). Upon the receipt of the communication the auditor general appoints some suitable person of the proper county as escheator. The

escheator conducts the proceedings as laid down by the Act of May 2, 1889, P. L. 66 (This act sets forth the full procedure), as amended by Act of May 11, A. D. 1911, and pays over the proceeds of the escheated property to the State.



## CHAPTER XI.

### WILLS.

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#### 155. Definition of Wills and of Terms Thereof.

"A will," says Chancellor Kent (4 Kent Com. 50), "is a disposition of real and personal property to take effect after the death of the testator." Correctly speaking, a will of personal property is called a testament. A will of real estate is called a devise (Mitchell on Real Estate and Convey. 513).

The person who makes a will is called the testator, if female, testatrix. The person to whom the will gives real estate is called the devisee; and what he receives, a devise. One who receives personal property is called legatee, and what he receives, legacy. The apt words to be used in willing real estate are devise and for personal property bequeath. Latterly, however, this distinction has not been maintained and it has become customary to use the form, "I give, devise and bequeath," indiscriminately. When a will is written wholly by the testator, it is called a holograph will. A codicil is a supplement to a will altering or changing some part or parts of it.

#### 156. Origin of Wills.

During the early history of mankind the only right man had to acquire and possess property was the right of might. Upon his

death, whatever he possessed or occupied was by law of nature open to any who choose to take it, and so the next occupant acquired title. Usually the next occupant was a member of the decedent's family for the obvious reason that a member of the family was usually nearest to the property when the death occurred. With the dawn of civilization and as society organized, to prevent this unseemly scramble and its attendant disturbance, the law declared who should be entitled to the decedent's possessions. Later, the dying person was given the right to dispose of his possessions by will.

The right, therefore, to make a will is just as is the right to inherit, purely a matter of grace on the part of organized society which we call the state. During the early days of the common law only personal property could be willed. Land descended by the inexorable laws of descent. It was not until the 16th century, after the advantage of willing estates in land became manifest, from the practice of devising equitable estates or uses, that the parliament of England passed an act (Stat. 32, Hen. VIII, C. I) enabling land to be devised by will.

#### 157. Modern Requirements of Wills.

Since the right to make a will is derived from the permission given by the state, it follows that each state may prescribe the manner and form in which the will shall be made. This has been done by the states enacting various statutes, usually termed statutes of wills. Sometimes the question arises whether the will must conform to the law of the state in which the testator is domiciled, or to that of the state where the land lies. The rule is settled that in construing devises of real estate the law of the state in which the land lies governs all questions concerning the form and validity of the will. But with personal property it is otherwise. The law of the state in which the testator lives governs the disposition of his personal property, no matter where located.

In drawing a will containing a devise of real estate care should be taken to conform to the requirements prescribed by the state in which the real estate is situated. Happily, the requirements of the various states do not differ greatly. Still differences exist, *e. g.*, in Pennsylvania, a will ordinarily may not require subscribing witness. In New Jersey a will would not pass title to real estate unless witnessed by two subscribing witnesses. Generally

speaking, however, it will be found that a will, in writing, made by an adult of sound mind, and signed by him in the presence of two subscribing witnesses, will be effectual to pass title in most any jurisdiction.

#### 158. Statute of Wills in Pennsylvania.

The earliest statute of wills in Pennsylvania was the act of 1705 (Sm. L. 33), which was afterwards replaced by the Act of April 8, 1833 (P. L. 249), which provided in effect that every person of sound mind might by will dispose of his or her real estate, whether held in fee or for life, and whether by severalty, joint tenancy or common, and also his or her personal estate. Married women were excepted by this act, but later were given equal right to will (Acts of April 11, 1848, P. L. 537, and 8th of June, 1893, Sec. 1, P. L. 344).

The statute further provides that the will shall be in writing, signed at the end thereof. Provision is also made by the same statute for the making of a nuncupative will, *i. e.*, an oral will. As personal property only can be bequeathed by a nuncupative will, we will limit ourselves strictly to the consideration of the wills by which title to real property may be passed. Let us, therefore, consider the essential requirements of a valid will under the Pennsylvania laws.

#### 159. Who May Make a Will, Capacity.

Any person, whether male or female,\* married or single, twenty-one years of age who is of sound mind may make a will.

What constitutes soundness of mind is difficult to define by general rule, nor can we do more in this book than to indicate generally what the law means. Probably the best known rule is that laid down by Judge King, in the case of *Leech v. Leech*, 1 Phila. 244, which, reduced to simple verbiage, is:

If a testator at the time of making the will knows what he is doing, knows what he is giving and knows to whom he is giving, he possesses sufficient capacity to make a will. As indicated by this rule, something more than mere weakness of mind must

\*Possibly it should be noted that the Act of March 13, 1815, 6 Sm. L. 286, Sec. 10, deprives a woman who has been divorced for adultery and afterwards cohabits with her correspondent on whose account she was divorced, of all power to alienate land, whether by deeds, wills or otherwise.

exist before the will can be set aside on the ground of want of capacity (See also *McNitt's Estate*, 229 Pa. 71).

Where a person is of weak mind, especially when the weakness results from a great age, the usual allegation of those who seek to set the will aside is that it was made under undue influence. Undue influence is not to be confounded with want of capacity. The latter means the testator never had the requisite qualifications to make a will; in other words, was of unsound mind. But even if the testator had the requisite capacity a will may be set aside if made under undue influence, for then it is not really the testator's will, but the will of the person who dictated it. By undue influence is meant not mere solicitation or coaxing but such influence or constraint brought to bear upon the mind of the testator that at the time of the making of his will he was not a free agent (*McMahon v. Ryan*, 20 Pa. 329; *Englert v. Englert*, 198 Pa. 326).

#### 160. Will Must Be in Writing.

The statute requires that the will must be in writing. Under certain circumstances the law allows an oral or nuncupative will to bequeath personal property. Title to real estate, however, cannot be passed by a nuncupative will. A will either type-written, in lead pencil (*Smith v. Beales*, 33 Pa. Superior Ct. 570) or in ink is considered to be writing within the meaning of the statute. It may be written on parchment or paper or any substance which will preserve writing permanently.

#### 161. Will Must Be Signed at the End. Execution.

The will must be executed by the testator signing at the end thereof or by some person in his presence and by his express direction; unless he shall be prevented by the extremity of his last illness (Act of April 8, 1833, P. L. 249, Sec. 6). It has been held that signature by mark (Act of Jan. 27, 1848, P. L. 16) or by initials is a valid signing within the meaning of the act (*Greenough v. Greenough*, 11 Pa. 497). However, it must appear that it was intended by the testator as a complete signature (*Knox Estate*, 131 Pa. 220).

The question has often arisen, What is the end of the will? It arose in a case (*Baker's Appeal*, 107 Pa. 381) where a will was written on the first and third pages of a sheet of foolscap paper, and was signed and sealed by the testator at the

foot of the third page and there attested by subscribing witnesses. On the fourth page was an unsigned and unattested clause which read as if it was meant to form part of the body of the will. The court held that although the instrument was not signed at the end thereof in point of space, it was signed at the end of the will in point of fact, and that it was, therefore, a valid will under the statute. "The end of a will is the logical end of the testator's disposition of his property wherever it manifestly appears on the paper, and the position of the signature with regard to the bottom or end of the page is only evidence as to whether the testator has completed the expression of his intention; prima facie the bottom or end of the will is the natural place for the signature to show the full expression of the testator's wishes, and is, therefore, presumptively the right place for it; but it is only evidence and must give way to evidence of a different intent" (Stinson's Estate, 228 Pa. 480).

Usually, however, it is unsafe to have anything written after the signature, and care should be taken to avoid it. A clause written after the signature if it has no bearing on the contents of the rest of the will or its interpretation will be ignored (Wikoff's Appeal, 15 Pa. 281). But if it bears upon the will or is essential to its interpretation the whole will is considered invalid (Wine-land's Appeal, 118 Pa. 37; Taylor's Estate, 230 Pa. 346).

#### 162. When Subscribing Witnesses Are Necessary.

A will whether devising real estate or personalty does not require subscribing witnesses in Pennsylvania unless it contains a devise or bequest to a church or other religious or charitable use. In such case the law provides (Act of April 26, 1855, P. L. 329, Sec. 4) that the will must have two disinterested credible subscribing witnesses and must be made one calendar month before the decease of the testator. "The purpose of this act is plain and was to make reasonably sure that testamentary gifts to religion or charity were the result of deliberate intent of the testator and were not coerced from him while in a weakened physical condition under the influence of the doubts and terrors of impending death" (Paxson's Estate, 221 Pa. 98). Says the court in Shoemaker's Appeal (39 Pa. C. C. 24), "A disinterested witness under this section is one who has no legal interest and a credible witness is one not disqualified to testify, while an attesting witness means a subscribing witness." "The witness need neither read nor have the

contents of the instrument explained or read to him. Neither is it indispensable that he should see it signed by the testator as the latter may acknowledge his signature in the witnesses' presence and such witness is credible under this section" (Kessler's Estate, 221 Pa. 314).

By disinterested person the law is said to mean a person who has no pecuniary interest, whether as servant or employee in the church or charity receiving the devise (Paxson's Appeal, 221 Pa. 98; Kessler Estate, 221 Pa. 314; Jeanne's Estate, 228 Pa. 537; Stinson's Estate, 232 Pa. 218). The recent Act of June 7, 1911 (P. L. 702), further defines the term disinterested witnesses to mean "A disinterested witness being a witness not interested in such religious or charitable use, this act (meaning Act of April 26, 1855, P. L. 328), not being intended to apply to a witness interested in some other devise, bequest or gift in the same instrument." But this Act of June 7, 1911, has no retroactive effect and does not apply to a will executed before its date (Leech's Estate, 236 Pa. 58; Kelly's Estate, 236 Pa. 54).

While, therefore, subscribing witnesses are not necessary except in the instance set forth above, it is earnestly recommended that whenever a will be drawn to have two disinterested subscribing witnesses. This, because the law of some other states may require it, and the testator may have or may thereafter acquire title to land in such other states.

### 163. Form of Will.

No set form of words is essential to the validity of a will. No particular words are necessary. All that is required is that the intention of the testator be made clear. Yet, nevertheless, an inexperienced conveyancer ought to hesitate to draw a will unless it be of the simplest kind. Where the testator desires to create trusts and to give limited estates with remainders, it is better practice to consult an attorney. After all, it is not the province of a modern conveyancer to draw such a will and untold litigation may be avoided by his refusal to do so. However, a simple will, such as the form herein set forth, any one can draw without compunction:

### LAST WILL AND TESTAMENT.

I, ABRAM JONES, residing at 1342 Blank Street, Philadelphia, Pa., being of sound and disposing mind, memory and under-

standing, do make, publish and declare the following as and for my last will and testament, hereby revoking any and all wills by me at any time heretofore made.

First: I direct that all my just debts and funeral expenses be paid as soon as conveniently can be after my decease.

Second: I give, devise and bequeath to my son John my gold watch and chain.

Third: All of the rest, residue and remainder of my estate, whether real, personal or mixed, and wheresoever situate, I give, devise and bequeath unto my beloved wife Rebecca Jones, absolutely and forever.

Lastly: I hereby designate, constitute and appoint my said wife Rebecca Jones to be the executrix of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this first day of September, A. D. 1912.

ABRAM JONES. (Seal).

Signed, sealed, published and declared by the testator as and for his last will and testament in our presence, who, in his presence and in the presence of each other and at his request, have hereunto subscribed our names as witnesses.

JOHN DOE.

ADAM ROE.

In devising real estate, words of inheritance (*i. e.*, heirs) need not be added to the name of the devisee, as in the case of a deed (See Par. 54 *d*). The words, "give, devise, and bequeath to John Smith absolutely and forever" will convey a fee. The real estate devised need not be described by metes and bounds. The number of the street in a city is sufficient. Any description which will identify the land intended to be given is enough. The residuary clause which is that clause beginning with the words, "All the rest, residue and remainder of my estate," etc., when drawn broadly as set forth in the foregoing form, will operate to pass a fee to any real estate and all personal properly not specifically devised or bequeathed before. The will speaks not from the time of its date but from the time of the testator's death. Thus, if the testator acquired real estate after the date of the will it would nevertheless pass to devisees in accordance with the terms of said will.

#### 164. Codicil, Form of.

Sometimes it happens that a testator desires to change a single clause or bequest in his will without changing the rest of it. This is done by a writing executed similar to the will, which

recites its purpose and then makes the change. The codicil need not be in any particular set form of words. A convenient form is as follows:

#### CODICIL.

I, ABRAM JONES, of Philadelphia, Pa., having made my last will and testament dated the first day of September, A. D. 1912, whereby I bequeath to my son John Jones my gold watch and chain. Now, therefore, I do hereby revoke the said legacy as given by my said will and hereby give said gold watch and chain to my son Philip Jones. In all other respects I do hereby ratify and confirm my said will.

In witness whereof I have hereunto set my hand and seal this 30th day of September, A. D. 1912.

ABRAM JONES. (Seal.)

Signed, sealed, published and declared by the said Abram Jones, as and for a codicil to his last will and testament in the presence of us, who, in his presence and in the presence of each other, have, at his request, subscribed our names as witnesses thereto.

JOHN DOE. (Seal.)

RICHARD ROE. (Seal.)

The effect of a codicil is to confirm and republish the will as of the date of the codicil in all respects except as altered by the codicil (Davis' Estate, 27 Montg. [Pa.] 31; Gilmour's Estate, 154 Pa. 523; Kelly's Estate, 236 Pa. 54). A second codicil may be added after the first, and so on. The codicils should be kept with the will and are probated with it.

#### 165. Widow's Right to Take Against the Will.

A father may disinherit his children by his will without making any provision for them whatever, and give his entire estate to strangers. But a husband cannot by will deprive his widow of the provision given by the law to the wife in lieu of dower. In other words, the wife has a right to take against the will of her husband the same share of his property she would have received had he died intestate (See ante, Par. 134, Sec. 1, Clauses 1, 2). That is, if the husband dies leaving no children the wife may claim \$5,000 and half of the remaining personal property and half of the real estate absolutely and for life, respectively. If children, one-third of the personal property absolutely and one-third of the real estate for life. This by reason of the Act of April 20, 1869, P. L. 77, which provides that if the widow elects to take against



the will of her husband she shall be entitled to such interest in the real estate of her deceased husband as the widow of decedents dying intestate are entitled to under the existing laws of this Commonwealth.\*

Should the widow, however, accept the provision made by her husband in his will she is held to take it in lieu of her dower. So that now the widow may take her choice between what the husband leaves her in his will and what she would have received had he died intestate. By the Act of April 21, 1911 (P. L. 79), the surviving widow or husband must signify their election in writing to the executor or administrator of the will, which must be recorded at the recorder of deeds' office before any payment from the estate is made to the widow or surviving husband. Should the widow elect to take against her husband's will and her share would destroy the testator's testamentary scheme, then the whole will falls. If, however, she can be paid or given her share without effecting the rest of the devises or bequest then only that part containing the provision for her falls.

#### **166. The Right of Surviving Husband to Take Against the Will.**

The husband likewise cannot be cut off by the will of his wife. He may take against the will his curtesy, *i. e.*, the right to enjoy all her real estate for life. He has a further choice of the Act of May 4, 1855 (P. L. 430), which gives him the reciprocal right to take against his wife's will such share and interest in her real and personal estate as she can when surviving elect to take against his will in his estates. This means that he is entitled to take against his wife's will the \$5,000 provided for her by the Act of April 9, 1909, P. L. 87, as set forth in the preceding paragraph (Moore's Estate, 50 Pa. Super. 76).†

\*In the recent case of Guentheor's Estate, 235 Pa. 67, the words of this act "existing laws" of this Commonwealth were held by the Supreme Court to mean the act of 1833 as amended by the act of 1909, although probably at the time the legislature passed the act of 1869 they meant by "existing laws" the laws *then* existing, to wit, the act of 1833. The practical effect of Guentheor's Estate is that unless a man dies leaving children or has an estate over \$5,000 in value he is barred from making a will.

†This case is the logical sequence of Guentheor's Estate (*supra*), and results in this curious condition; if a wife owning \$5,000 worth of real

The husband, therefore, has three choices. First, he may take the provision of the will. Second, he may take his curtesy, that is, all of the real estate for life, or, Third, he can take against her will a share of both real and personal estate equal to what the law would give her in his estate against his will. His election must also be in writing and recorded, as in the case of the surviving wife (Act of April 21, 1911, P. L. 79; see Par. 165). Here also, as in the case of wife if the husband's election to take against the will operates to destroy the testamentary scheme, then the whole will falls.

#### 167. Revocation of Wills. **Express Revocation.**

Since a will does not take effect until the death of testator it follows that it may be revoked at any time prior to testator's death. A will may be revoked either by express act of the testator, in which it is called an express revocation, or by operation of law, in which case it is termed an implied revocation. In Pennsylvania (Act of April 8, 1833, P. L. 249), provides that wills devising real estate shall not be revoked except by some other will or codicil in writing or other writing. . . . . declaring the same executed and proved like a will, or by burning, cancelling or obliterating or destroying the same by the testator himself or by some one in his presence and by his express direction. A will bequeathing personal property only, must be revoked in the same way, unless a later nuncupative will be made. It is a good practice in drawing a will to put in a clause revoking all prior wills (See Form, Par. 163), although not strictly necessary since if the later will is totally inconsistent with the prior will it prevails and the prior will is revoked. If, however, not totally inconsistent the prior will is only revoked *pro tanto*, that is, only in such parts as are inconsistent with the last will. The writing revoking a will need not necessarily be a will, it can be any writing provided it is executed and proved like a will.

Revoking a will by cancellation or obliteration or destruction means cancelling in the popular sense. Thus scratching out or drawing a line through the signature (Evans' Appeal, 58 Pa. 238), writing the word cancelled or annulled across its face, or

estate dies intestate and childless, the husband would under the intestate laws be entitled only to all the real estate for *life*. But if she made a will he could, under this decision, take against the will all the real estate *absolutely*.

tearing it up, are all acts of revocation (Evans' Appeal, 58 Pa. 238).

#### 168. Implied Revocation.

Marriage or subsequent birth of child not provided for in the will operates as revocation of the will so far as the widow or subsequently born child or children is concerned (Act of April 8, 1833, P. L. 249). This is term an implied revocation. By the terms of the act such revocation is not, however, total, but only as far as the wife or after-born child is concerned. The testator is only considered to have died intestate as to wife married or the child born after the making of the will; the rest of the will is good. A single man should, after his marriage, immediately have executed a codicil confirming his will and should execute such a codicil after the birth of each child. (For Form, see Par. 286). All that is required relative to the provision for an unborn child is that the testator shall have the child in mind and shall make clear his intention that the will shall apply to it. Any provision that does this is sufficient and the inquiry whether large or small, equal or unequal, vested or contingent, present or future, is irrelevant and outside the jurisdiction of the court except so far as it tends to throw light on the question of intention. A provision as follows: "I declare this to be and contain my last will and testament and that after-born children are herein provided for" is sufficient (*Randall v. Dunlap*, 218 Pa. 210).

The above Act of April 8, 1833, P. L. 249, relating to after-born children applies only to natural born children and has no application to adopted children. A child adopted after the adopting parent executed his will is not entitled to any rights as against that will in the adopting parent's estate (*Goldstein v. Hammell*, 49 Superior Ct. 39, aff. 236 Pa. 305).

A will may also be impliedly revoked either in whole or in part by the testator conveying away the property devised in his lifetime. Thus A, by his will, devised a house to B; later he sells the house; the devise to B is thereby impliedly revoked. If the testator has conveyed away so much of his real estate during his lifetime so that it is impossible to distribute the balance in accordance with his will, *i. e.*, if his whole testamentary

scheme is destroyed the whole will is revoked except possibly as to the appointment of an executor, if there is any need of one (Cooper's Estate, 4 Pa. 88).

#### **169. Probate of Wills.**

By probate of wills is meant the proving of the will to be the last will and testament of the decedent before the proper officer. The officer before whom the will is proved is called the surrogate in some states. In Pennsylvania he is called the register of wills. The will is probated by taking it to the register's office, who takes the affidavits of the subscribing witnesses that they were present and did see the testator execute the will. If there are no subscribing witnesses any two persons who are familiar with the decedent's signature can be called to swear to its authenticity. If the subscribing witnesses are dead or permanently beyond the jurisdiction two witnesses must be produced who can identify the signature of the subscribing witnesses. The register then issues letters testamentary to the executor, which constitutes his authority to act as such.

A will must be offered for probate within three years from the date of the death of the testator or it will be void and of no effect against a bona fide conveyance or mortgage of the real or personal estate of the decedent duly recorded before the date of the offering of said will for probate (Act of April 1, 1909, P. L. 79).

The will should be probated in the county where the decedent resided, or if he had no particular residence in the county where the principal part of his estate is located. The probate of wills is conclusive as to real estate unless contested after five years after date of probate. This limitation is absolute, there being no exception in favor of persons under disabilities such as minors, etc.

#### **170. Recital in a Devisee's Deed.**

When a devisee who acquires title by will desires to convey, his deed should contain a recital setting forth that he gained title by will referring to the page and book where the will is registered and preferably setting forth the extract from the will. The following will serve as a guide:

Being the same premises which Stephen Thompson  
by indenture bearing date the 24th day of April, A. D.

1898, and recorded in the Office for the Recording of Deeds in and for the City and County of Philadelphia in Deed Book J. V., No. 144, page 76, etc., granted and conveyed unto Abram Jones in fee. And whereas, the said Abram Jones departed this life on the first day of October, A. D. 1912, having first made and published his last will and testament in writing bearing date the first day of September, A. D. 1912, and recorded in the Office of the Register of Wills in and for the City and County of Philadelphia in Will Book No. 320, page 389, etc., in which he did provided inter alia as follows: "Third. All the rest, residue, and remainder of my estate, whether real, personal or mixed, I give, devise and bequeath unto my beloved wife Rebecca Jones absolutely and forever," etc., etc. Wherein and whereby said above-described premises became vested in said Rebecca Jones in fee.

## PART V.

### Searches, Real Estate Broker, Settlements, Etc.

#### CHAPTER XII.

##### SEARCHES.

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##### 171. Searches, Necessity for.

By searches we mean the examination of the title of vendor or prospective mortgagee in order to ascertain whether it is good, clear and free of incumbrance. The ability to make a satisfactory search and brief of title was formerly one of the most essential requirements of a good conveyancer. In Philadelphia and the larger cities of the State of Pennsylvania few conveyancers nowadays search the title themselves. Instead, it is done by the title insurance companies (See Par. 200 *infra*), who make a special business of searches which they insure or guarantee. In the smaller towns and rural regions of the State, however, considerable title searching is still done by the conveyancers, so that it is deemed well to devote a chapter to explaining the method of searching.

**172. How Records Are Indexed.**

First, a word as to the arrangement of the indexes which must be examined in searching title. The recorder of deeds' office is located at the county seat and contains, besides the deed books, mortgage books, etc., a series of books termed indexes. Deed indexes, mortgage indexes, miscellaneous indexes, charter indexes, etc. Taking the deed index as an example, we find that deeds are indexed twice, once under the name of the grantor, called the direct or grantor index, and once under the name of the grantee, called the ad sectum, or grantee index. The indexing is ingenious and is done in this way. There is for the grantor's index one book for each letter of the alphabet, and each book is divided into twenty-six subdivisions, each subdivision lettered in alphabetical order, beginning with the letter A. The initial letter of the grantor's surname fixes the book in which it is to be found, and the initial letter of the Christian name fixes the subdivision of that book in which the name is to be found. Thus, in order to find the name Andrew Gallagher, you take down index book "G" and turn to the part under the letter "A." In that part you will find every person's name whose last name begins with "G" and first name with "A." Look through these names until you come to the name you seek. Having found the name you will see the following entry:

**DIRECT OR GRANTOR INDEX.**

1912. E. L. T.

DATE.		BOOK.	PAGE.	GRANTOR.		GRANTEE.
June	20	71	32	Gallagher	Andrew	P. F. Smith.

The first column is the date, being the year, month and day when the deed was recorded. Then follows the book, number and page. In Philadelphia, by custom, the recorder of deeds' books are designated by the initial letters of the recorder's name. Thus, all deeds recorded during the term of the present recorder, Hon. Ernest L. Tustin, are recorded in books bearing the letters E. L. T. Next follows the name of the grantor, surname first,

then the Christian name. Finally, the name of the grantee. The arrangement of the grantee index is practically the same, though, of course, the grantee's name would appear before the grantor's, as follows:—

#### AD SECTUM OR GRANTEE INDEX.

1912. E. L. T.

DATE.		BOOK.	PAGE.	GRANTEE.		GRANTOR.
June	20	71	32	Smith	Peter F.	A. Gallagher.

All of the modern indexes, both mortgagor and mortgagee as well as judgment indexes of the prothonotary's office follow this arrangement.

#### 173. Kinds of Searches.

At the outset it should be remembered that a title may be bad because of its doubtful origin, as where a man purports to convey title to land which he never owned. On the other hand, while it may be without defect as far as derivation and origin is concerned, it may still be bad because it is so encumbered by mortgages and other liens as to be practically valueless. Thus searches are naturally divided into two kinds or classes. A conveyance search, which is a search to ascertain the sources from which a grantor derived his title, and an encumbrance search made to ascertain whether a title is subject to any mortgages, judgments or other liens.

#### 174. Conveyance Searches.

Conveyance searches are made at the recorder of deeds' office by examination of the grantor and grantee index. In Pennsylvania the source of all title is a grant by William Penn, or, latterly, the State. Usually the recital in the deeds will provide a rapid method of reaching the source of title and making a rough brief without the aid of the index. Should a recital, however, be missing, recourse must be had to the index to supply the missing link. After ascertaining the source of title to be proper, search



for adverse conveyances against every person whose name appears in the chain of title from a time prior to his acquisition of title until six months after the recording of the deed, as the vendor may have conveyed to another purchaser by deed executed outside of this State. Search against the present owner from the time he acquired title to date. The search should not only be made against the owners of the fee but against all having an interest therein, such as executors, administrators, trustees, assignees, receivers, guardians, committee of lunatics, etc. Also, against such as have a power of sale. Search now in the office of the courts of common pleas for possible sheriff's sales, by which the owner may have lost title. Since 1893 (Act of May 24, 1893, P. L. 127), however, sheriff's sales are now recorded in the recorder of deeds office, indexed both under name of grantee and the person whose title was divested by the sale. Search also at the office of the clerk of the United States courts for sales by the United States marshal, and for possible bankruptcy of owner.

Searches of title for ground rents are made as in the case of conveyance searches, and since they are real estate they must be searched also as encumbrances and liens.

#### **175. Search at Registry Bureau.**

In Philadelphia, by Act of March 14, 1865 (P. L. 320), all deeds must be registered before being recorded. This is done at the registry bureau and forms an additional means of verifying the title of a vendor. Search should, therefore, be made at the registry bureau which is established in Philadelphia, and since 1899, in all countries having a population over 500,000 and since 1901 in all cities of the third class. In Philadelphia, the registry bureau is a department of the city survey bureau.

#### **176. Encumbrance Search. (a) Mortgages.**

Having found the title to be without defect the next step is to see if it is encumbered. Search first for possible mortgages.

Search for mortgages is made at the recorder of deeds' office. The mortgages are indexed in a separate index called the mortgage index. Search should be made in this index as follows:

Search in the mortgage index against every name in the chain of title back to time prior to the year 1830, for prior to that date a sheriff's sale discharged mortgages. Before 1887, an orphans'

court sale also discharged a mortgage, so that if you come to orphans' court sale before that time you need go no further. Since 1830 a sheriff's sale will only discharge a mortgage upon its foreclosure, or if it be not prior to all other liens except other mortgages, ground rents, purchase money due the Commonwealth, municipal claims and taxes.

Of course, in searching for mortgages against persons in the chain of title you need only search against any one of them from the time he conveyed title back to the time he took title. Where the present owner against whom the search is being made took title within sixty days there is a possibility that a purchase money mortgage may be recorded later, for a purchase mortgage has sixty days to be recorded in (See Par. 88). In such case the declaration of the present owner must be secured as well as of his immediate grantor that no purchase money mortgage formed part of the consideration.

All assignments of mortgages and any proceedings or actions commenced therein will be found noted on the margin of the mortgage record in the mortgage books.

#### 177. Encumbrance Search. (b) Judgment Liens.

Having ascertained the title to be good and marketable and free from any mortgage liens it is necessary to prosecute a further search in order to ascertain whether there are any judgment liens against the property. A judgment is a decree of a court of competent jurisdiction determining that the one person is indebted to another in the amount stated. The party in whose favor a judgment is rendered can, if it is not paid, proceed to sell the other's property. A judgment by law (Act of March 21, 1772, 1 Sm. L. 390, Secs. 2, 3) is a lien against all of the real estate of the person against whom it is entered from the time of its entry. It is not a lien against personal property, but against real estate only. Its lien binds any freehold estate in land, whether a fee, life estate (Hoffman's Estate, 2 Pears. 317), or curtesy (Beard v. Dietz, 1 Watts 309), whether absolute or in common. It binds a ground rent but not a leasehold, which is a chattel (Krause Appeal, 2 Whart. 398), nor a mortgage, which is also personal property. A judgment binds all of defendant's real property and interests therein unless it be restricted to a particular piece of real estate by agreement filed of record, signed by the party in whose favor it is rendered (Hendrick v. Thomas,

106 Pa. 327). So, too, the lien of a judgment may be released as to a particular part of a party's real estate without effecting its lien against the rest (*Kirk Appeal*, 87 Pa. '243). It is only a lien upon the interest in real estate owned by the defendant at the time of its entry and does not effect real estate sold before its entry (*Bitting's Appeal*, 17 Pa. 211), or acquired thereafter (*Kemmerer v. Tool*, 78 Pa. 147). To make it a lien on after acquired real estate, a scire facias must be issued to revive it as of a later date (*Clippinger v. Miller*, 1 P. & W. 64; *Stewart v. Peterson Exec'rs*, 63 Pa. 230). The duration of the lien of a judgment is five years. At the expiration of that time it may by appropriate proceedings be revived for another period of five years, and so on.

#### 178. Where to Search for Judgment Liens.

Judgments are rendered by various courts, but are only a lien when entered by the following specified courts: Supreme Court, Superior Court, Common Pleas Court, Quarter Sessions Court—Oyer and Terminer, United States Courts. Except as hereinafter mentioned, a United States Court judgment to be a lien must be entered in the county where the land lies. It may, however, be transferred to any other county by filing an exemplification or transcript thereof. Since a judgment is only a lien for five years it is only necessary to prosecute the search for that period. Search against every person who has held title during the five years prior to the times of making the search. Judgments of magistrates' court are not liens against the land. To become liens, transcripts thereof must be filed in the Common Pleas Courts.

#### 179. Appellate Courts' Judgments.

While few judgments are entered in the Supreme Court which are not also entered in the Common Pleas Courts, good practice (*Directions for Making Searches*, by Eli Kirk Price, edited by Edw. F. Pugh, *Dunlop's Forms* 1071) requires a separate search to be made there. The search in the Supreme Court must be made at the office of the prothonotary of said court. No separate search need be made in the Superior Court, since the law provides that no judgment thereof shall become a lien until the record is returned to the court below (common pleas court) and entered upon the proper dockets (*Act of June 25, 1895, P. L. 219*,

Sec. 8). Thus, any judgment entered in the Superior Court will be disclosed when search is made in the common pleas court.

#### 180. Common Pleas Judgments.

By far the greatest number of judgments are entered in the courts of common pleas. Search must, therefore, be made in the common pleas of the county wherein the land lies. The index of judgments is to be found at the office of the prothonotary of the common pleas courts, is called the judgment index. This index is arranged similar to the indexes of the recorder of deeds' office (See Par. 172). If searching against Andrew Gallagher, take the G book and turn to the subdivision of the A's. The index will show besides the name of the defendant, the name of the party in whose favor the judgment was entered, his attorney and the amount of damages if liquidated (Note a judgment is a lien from the date of its entry regardless whether the amount of damages have been liquidated or not), together with the name of the court, and term and number of the proceedings. The entry will appear as follows:

	DEFENDANT.	PLAINTIFF.	COURT.	TERM	No.	ATTY.	DATE.	AMOUNT.
	Gallagher, Andrew	Robinson, J.	1	J. 12	1478	Smith	June 8, 1912	\$2,000.00

If the judgment has been paid, released or otherwise satisfied, the fact will be noted in the first column which in the above entry is blank. If more detailed information is wanted, the name, term and number of the court will furnish a clue to the proper docket, which sets forth the proceedings in detail. Both prothonotary and recorder of deeds of Philadelphia county will issue certificates of search if asked to, although they are not authorized or required to do so by any act of assembly. When they issue such certificates they are liable on their official bond for any error to the person to whom certificates are issued (*McCarher v. Commonwealth*, 5 W. & S. 21).

#### 181. Criminal Court Judgments.

The Courts of Quarter Sessions and Oyer and Terminer are criminal courts. Judgments of fines, costs and forfeited bail bonds are entered in these courts and become a lien from the

date of their entry. In the Quarter Sessions Courts are also entered road damages. The judgment index for these courts is kept at the office of the clerk of quarter sessions and search must be made there.

#### 182. United States Court.

Up until 1911 there were two federal courts of original jurisdiction, the District Court, whose jurisdiction was principally bankruptcy and criminal, and Circuit Court, whose jurisdiction was civil. Now the jurisdiction of both have been consolidated into one court, termed the District Court, the geographic jurisdiction of which, like its predecessors, embraces many different counties (Judicial Code, Act of March 31, 1911, Chapter 231, Sec. 1, Federal Statute Supp. 132). The liens of the United States Courts before and since the consolidation are liens upon land situated in the counties in which the court sits, upon the entry of the judgment. But in other counties of the district, not until a transcript thereof is filed in the Common Pleas Court of that county. Thus a judgment entered in the United States District Court for the Eastern District of Pennsylvania would be a lien on land in Philadelphia county from the time of its entry, because the United States court sits there. To make this judgment a lien in Delaware county, where the court does not sit, a transcript must first be filed at the prothonotary's office of Delaware county, who will index it in his judgment index. To make the search, if necessary, in the United States courts the judgment index will be found at the clerk's office. Until 1916 it will, of course, still be necessary to search the indexes of both the old Circuit Court and the old District Court, which were kept separate.

#### 183. Liens of Decedent's Debts.

By act of 1901 (June 14, 1901, P. L. 562) all debts of a decedent are a lien on all real estate of which he died seised for two years after his death, regardless of whether these debts had been reduced to judgments in decedent's lifetime or not. After two years from date of decedent's death the liens of debts other than judgments expire unless preserved by suit being commenced and indexed (Act of May 3, 1909, Sec. 1, P. L. 386) in the judgment index of the prothonotary. If suit commenced at any time before the expiration of the two years is indexed as above stated

and duly prosecuted to a judgment, its lien is preserved. Should the debt not be payable within the two years as (*e. g.*, a three-year note dated just before decedent's death), so that suit cannot be commenced, the lien may be preserved by filing a copy of the instrument or evidence of indebtedness with the prothonotary, who will index it in the judgment index. Search, therefore, within two years of a decedent's death will avail nothing. After two years, search in the judgment index will disclose any liens still existing. Where a decedent's land is sold by orphans' court sale for payment of debts the liens of all debts are immediately discharged and thrown against the fund.

#### **184. Other Liens. Mechanics' and Municipal Liens.**

The judgment index at the prothonotary's office will disclose and should be searched for municipal improvements, such as grading of streets, paving, etc., which are liens from the time of their completion, if filed within six months from that time. Mechanics' liens by act of 1901 (Mechanic's Lien Act of June 4, 1901, P. L. 431) may also become liens against property from the time of the commencement of the work, if filed within six months from its completion for new work (Act of June 4, 1901, Sec. 13), and within three months for repairs exceeding \$100.00. Mechanics' liens when filed are also indexed in the judgment index of the prothonotary's office. If the right to file a lien be waived before the beginning of the work by writing duly executed in accordance with the law (Mechanic's Lien Act of June 4, 1901, Sec. 15, P. L. 431), no mechanic's lien can be filed either by the contractor, subcontractor or material man, and if filed will be stricken off.

#### **185. Locality Index in Philadelphia.**

In Philadelphia, under a special act (Act of March 21, 1864, P. L. 171), there is kept by the prothonotary of the common pleas courts a locality index. All municipal claims and mechanics' liens, in addition to being indexed in the name of the owner, are also indexed under the location or description of the property. Searching this index not only verifies the judgment index but turns up liens against property where the name of the owner was either unknown or erroneously given. In many counties where the tax collector is unable to ascertain the name of the owner, tax liens are indexed under the name "unknown."

This is unnecessary wherever the counties have either a registry bureau or locality index.

#### 186. Taxes and Unfiled Liens Etc.

Since 1901 by statute (Act of June 4, 1901, P. L. 364) all taxes are a first lien on property even if unfiled for two years from the date they accrue. The law provides that upon the judicial sale of any property the taxes must be paid out before any other lien or encumbrance or anything else except the court costs and costs of sale. In order for the liens of taxes to be preserved after two years they must be filed as a municipal claim before the expiration of two years and revived every five years thereafter. When so filed they will appear on the judgment index of the prothonotary's office. Water rates, lighting and sewer rates must also be filed in the prothonotary's office within two years after they are payable or else they will not be a lien. As stated in Paragraph 184, unless the right be waived there may be a right to file a mechanic's lien against a property just completed or repaired, which, by filing within six months, would ripen into a lien. When taking title to a property therefor demand the owners' affidavit that it has been completed longer than six months or that no repairs have been made within the past three months, or require a release of liens. Municipal claims also, such as street improvements and paving, are a lien from the time of the completion of the work until six months thereafter without being filed.

To guard against the possibility of these unfiled liens, see that all taxes and water rent receipts are produced for two years or a certificate of their payment obtained from the Receiver of Taxes. Require an affidavit also that no street improvements were made or other possible municipal claims have accrued within six months or that payment thereof has been made.

#### 187. Assignment of Mortgage Searches.

When searching title in order to see whether a first mortgage about to be assigned is good, search first against the title of the mortgagor, as if for a conveyance (Par. 174). Then for mortgages, to see whether the one to be assigned is a first lien as represented. Then search for possible prior assignments thereof. Assignments of mortgages are indexed in a separate index, as well as noted on the margin of the mortgage book. All assign-

ments of mortgage must have two witnesses. Search should then be made for possible releases to see whether the mortgage still covers all the land described by it. In Philadelphia, releases of mortgages are also indexed in a separate index since 1880. Having completed the search, demand as a final precaution a declaration of no set-off from the owner and ascertain if there are any outstanding unpaid municipal claims or taxes (See Par. 186).

#### 188. Examination of Property.

After all searching is completed personally view the property about to be conveyed. This will afford an opportunity of discovering any existing easement not disclosed in the chain of title. In Pennsylvania a person takes subject to any visible and notorious easement without express mention in the deed, the rule being, "Where an owner of land subjects part of it to an open, visible, permanent and continuous servitude or easement in favor of another part, and then aliens it the purchaser takes subject to the burden or benefit as the case may be (*Liquid Carbanic Co. v. Wallace*, 219 Pa. 457). Ascertain also, if the owner is not in possession, whether the occupant is a tenant or claims to hold adversely to the owner. "It evinces as much carelessness to purchase property without having viewed the premises as to purchase without having searched the register" (*Woods v. Farmee*, 7 Watts 382). "Nor does knowledge of the existence of a lease relieve one dealing with the lessor from the duty of inquiring from one in possession whether he claims otherwise than under the lease" (*Anderson v. Brinser*, 129 Pa. 376).

#### 189. Synopsis of How to Search.

##### SEARCHES AGAINST A PROSPECTIVE GRANTOR OR MORTGAGOR.

I. (1) Make a conveyance search by searching at the recorder of deeds' office as indicated in Paragraphs 172-174 for flaws in the title.

(2) Verify your search at the registry bureau as indicated in Par. 175.

II. Now make your encumbrance search.

(1) For mortgages in the mortgage index at the recorder of deeds' office as outlined in Par. 176.



(2) Search for judgments at the office of the prothonotary of the Supreme Court (Par. 179).

(3) Search for judgments at the office of the clerk of quarter sessions (Par. 181).

(4) Search for judgments at the office of the clerk of United States courts (but only in such counties where the court sits, *e. g.*, Philadelphia, Allegheny, etc., Par. 182). While at this office, make search for possible marshal's sales to complete your conveyance search (Par. 174).

(5) Search at the office of the prothonotary of the common pleas courts.

*a.* Judgment index for judgments (Par. 180).

*b.* Judgment index for lien of decedent's debts, if any (Par. 183).

*c.* Judgment index for municipal and mechanic's liens (Par. 184).

*d.* Locality index (in Philadelphia) (Par. 185).

*e.* Search here also for sheriff's sales to complete conveyance search (Par. 174).

### III. Personally examine property.

(1) For easements not noted in chain of Title (Par. 188).

(2) As to occupation (Par. 188).

Note protection against unfilled liens and taxes (Par. 186).

### SEARCHES FOR GROUND RENT.

Titles to ground rents should be searched for the same as above.

### SEARCHES WHERE AN ASSIGNMENT OF MORTGAGE IS TO BE MADE.

I. Search against the original mortgagor as fully as though he were a prospective mortgagor, or grantor, so as to establish the validity and nature of the lien about to be assigned (Par. 187).

II. *a.* Search against the original mortgagor and all subsequent assignees of the mortgage during the time they respectively held title, so as to turn up any adverse assignments (Par. 187).

*b.* See that assignments are in proper form with two witnesses.

III. Search against all holders of mortgage for possible releases (Par. 187).

## IV. Demand declaration of no set-off (Par. 187).

## 190. Brief or Abstract of Title. Form.

The result of the searches is arranged to show the chain of title in what is called an abstract or brief of title.

*The following Abstract of Title* is set forth "in extenso" as an admirable example of the old time conveyancer's art. It is a splendid guide covering as it does six separate chains of title for over a hundred years, to a half a block of houses, uniting them finally in the ownership of one man. The careful study of this abstract of title is recommended to all those who wish to learn title searching, for in it they will find recited practically every mode of acquiring title as *e. g.* by adverse possession, by deed, by will, by descent, extinguishment of ground rents, mortgage foreclosure proceedings, sheriff sale, proceedings in Orphans' Court, &c.

## Brief or Abstract of Title.

TO ALL THAT CERTAIN lot or piece of ground with the mesuages or tenements and other buildings and improvements thereon erected SITUATE in the Twelfth Ward of the City of Philadelphia and described according to a recent survey thereof, as follows, viz: BEGINNING at a point on the south side of Fairmount Avenue at the distance of fifty-seven feet, seven inches westwardly from the westwardly side of Hermitage Street (formerly Smith's Alley), thence extending southwardly through the middle of a wall eighteen feet to a point, thence still southward on a line parallel with Fourth Street fifty-five feet, ten inches to a point, thence eastwardly on a line parallel with said Fairmount Avenue fifty-four feet to the westwardly side of the said Hermitage Street, hence along the same southwardly seventy-six feet, four and one half inches to a point, thence westwardly on a line parallel with said Fairmount Avenue one hundred and twenty feet, one inch to a point, thence northwardly on a line parallel with the said Fourth Street seventy-five feet eleven and three quarter inches to a point, thence eastwardly on a line parallel with Fairmount Avenue four feet to a point, thence northwardly on a line parallel with said Fourth Street twenty-four feet, nine inches to a point, thence westwardly on a line parallel with said Fairmount Avenue one foot to a point, thence northwardly on a line parallel with said Fourth Street forty-nine feet, seven and three quarters inches to the south side

of said Fairmount Avenue and thence eastwardly along the same sixty-four feet, six inches to the place of beginning.

1784  
Dec. 6.  
Produced and  
examined.

**Deed Poll.**—Thomas Proctor, Esq., high sheriff to Francis Proctor, Sr., in fee for a certain lot of ground situate on the west side of Third Street in the Northern Liberties of the County of Philadelphia, CONTAINING in breadth on said Third Street and on the west end seventy-four feet or thereabouts and in length or depth 250 feet, BOUNDED eastward by said Third Street, southward partly by land of William Allen and partly by David Benezet's ground, westerly by other ground of Thomas Budd and northward by ground of Levi Budd.

Sold as the property of Benjamin Flowers. Consideration, forty pounds; subject to ground rent of seventeen pounds, eleven shillings and six pence per annum.

Acknowledged in open court of common pleas on December 20th, 1784. B 3, 449.

1785  
Nov. 12th.  
Produced and  
examined.

**Deed.**—Francis Proctor and Ann, his wife, to Jonathan Bayard Smith in fee for the same premises. Subject to the said ground rent of seventeen pounds, eleven shillings and six pence per annum.

Duly acknowledged June 10th, 1786.

The said yearly ground rent of seventeen pounds, eleven shillings and six pence has been duly released and extinguished.

Recited in  
Deed—Robert  
Ralston et al  
to Jacob  
Stearley.

1795  
January 1st.  
Produced and  
examined.

**Deed.**—Jonathan Bayard Smith and Hannah, his wife, to Richard Limehouse in fee for a certain lot of ground situate on the westerly side of a certain twenty feet wide alley (now Hermitage Street), being twenty feet wide through J. B. Smith's lot, of which this was part), CONTAINING in front on said alley twenty feet and extending in depth 120 feet BOUNDED southward by ground of Daniel Benezet and partly by ground of Jacob Steinmetz (being part of the premises last described). Reserving thereout a certain yearly ground rent or sum of twenty Spanish milled silver dollars.

Acknowledged July 17th, 1795, and April 24th,

1795, and recorded July 24th, 1804, in Deed Book E. F., No. 16, page 368, &c.

January 6th,  
1806.  
Produced and  
examined.

**Deed Poll.**—Richard Limehouse and Elizabeth his wife to John Harrison, in fee for the same premises. Subject to said ground rent of twenty (\$20.00) dollars.

Duly acknowledged same day and recorded May 18th, 1826, in Deed Book G. W. R., No. 9, page 355, &c.

1826  
Mar. 28th.  
Produced and  
examined.

**Deed Poll.**—John Harrison to Jacob Stearly in fee for the same premises. Subject to said ground rent or sum of \$20.00.

Recited in  
the next deed.

Duly acknowledged April 4th, 1826, and recorded May 18th, 1826, in Deed Book G. W. R., No. 9, page 356, &c. The said Jonathan Bayard Smith being seised in fee of and in inter alia the premises in question (being the premises conveyed by the next deed) died having first made and published his last will and testament in writing bearing date the first day of June, 1812, duly proven and registered at Philadelphia, wherein and whereby he did give and devise unto Robert Ralston, William Rush and Abraham Kintzing, and the survivors and survivor of them and the heirs, executors and administrators of such survivor, all his real estate IN TRUST for the uses and purposes therein set forth the rents and profits to be paid to his five children therein named for and during the space of five years after his decease and he did thereby further will as follows: "If the said trustees shall neither divide nor sell the same within five years after my decease then from and after the expiration of the said term of five years the said trustees shall sell or divide the same on the application and request of the major part of my children then living and if any child be dead his legal representatives to have a voice as he or they would have had if living," and of his said will he did nominate and appoint his sons John R. Smith, Samuel H. Smith and Jonathan Smith to be executors. And whereas the said Jonathan Smith is absent and the said Samuel

H. Smith and Margaret, his wife, Susan B. Smith, and Ann Caroline Smith, by letter of attorney dated October 20th, last past (1825), intended to be recorded, did nominate and appoint the said John M. Read to be their true and lawful attorney to grant, bargain and sell all or any of the lands and tenements belonging to the estate of their said father, to which they were entitled and to execute such deeds and conveyances as should be necessary therefor and also for them and in their names to apply to and require the said trustees to sell said real estate according to the directions of said testator and generally to do all such other acts, matters and things as should be necessary to effect the purposes of said testator.

**Deed**—Between Robert Ralston, William Rush and Abraham Kintzing, trustees of the last will and testament of Jonathan Bayard Smith, deceased, of the first part. John R. Smith, one of the devisees in said will named, Samuel H. Smith and Margaret, his wife, Susan B. Smith and Ann Caroline Smith (the said Samuel, Susan B., and Ann Caroline, being three other of the devisees in said will named), (the four last-named acting by their attorney John M. Read, duly constituted), of the second part and Jacob Stearly, of the third part.

WHEREBY, The said Robert Ralston, William Rush and Abraham Kintzing, trustees as aforesaid (upon the request of said parties of the second part), in consideration of the sum of \$1,000.00 and in pursuance and execution of the power and authority contained in said last will and testament, and of the trusts in them reposed and vested and by force and virtue thereof, granted and conveyed unto the said Jacob Stearly, his Heirs and Assigns A CERTAIN lot or piece of Ground, SITUATE on the West side of Smith's Alley (laid out from Green Street to Coats Street) in the Nothern Liberties of the County of Philadelphia, between Third and Fourth Streets CONTAINING in front or breadth on said Smith's Alley 55 feet six inches and

1826  
May 11.  
Produced and  
examined.

in length or depth Westward 120 feet, BOUNDED Southward by Ground formerly of Daniel Benezet and Jacob Steinmetz, Northward by a lot of ground granted to John Redman on Ground Rent, Westward by ground formerly of Thomas Budd, and Eastward by Smith's Alley aforesaid (including therein the lot of Ground conveyed by the last recited Deed). TOGETHER with all and singular the buildings, improvements, ways, alleys, passages, waters, &c., Hereditaments and appurtenances whatsoever thereunto belonging, &c. And the reversions, remainders rents, issues, and profits thereof, and also all the estate, right, title, interest, property, claim and demand whatsoever of them the said Trustees and of the said Jonathan Bayard Smith at and immediately before the time of his decease as well at law as in equity of, in, to and out of the same.

Duly proven May 16th, 1826, and recorded May 18th, 1826, in Deed Book G. W. R. No. 9, page 356, &c.

NOTE.—The hereinafter recited Deed from Luther G. Smith et al. to Peter S. Dildine recites that the above mentioned yearly Ground rent or sum of \$20.00 merged and became extinguished by virtue of the foregoing Deed.

Deed.—Jonathan Bayard Smith and wife to Duncan, in fee for a Lot of Ground SITUATE on the West side of Smith's Alley aforesaid—CONTAINING in breadth North and South 18 feet, and extending in length or depth 120 feet. Reserving thereout a certain yearly ground rent of 18 Spanish milled silver dollars payable half yearly on the first day of January and July.

Deed Poll.—John Barker high sheriff, &c., to John Redman, in fee for the same premises subject to the said ground rent of \$18.00.

Acknowledged in open Court of Common Pleas and entered among the records thereof in Book E, page 97, &c.

1795  
June 1.  
Recited.

1805  
June 8.  
Exd. Record.

1807  
Nov. 9th.

**Will of John Redman** wherein and whereby after sundry devises and bequests, he did give, devise and bequeath all the rest, residue and remainder of his estate in Pennsylvania, and all and every his personal property of every description whatsoever, unto Phinehas Bond, William Rawle and Samuel Coates their heirs and assigns forever and to the survivor of them his heirs and assigns forever upon the special trust and confidence, &c., to and for the absolute use and behoof of his beloved daughter Sarah Coxe—to be subject to her unqualified control and disposal to be sold, &c., as she might order and direct and upon the further trust that they shall and do well and truly dispose of his real estate in Pennsylvania, &c., in such manner and for such uses, &c., as his said daughter by writing under her hand and seal or by her last will and testament shall ordain, appoint, limit, and direct.

Duly proven and registered at Philadelphia in Will Book No. 2, page 278, &c.

1826  
Nov. 10th.  
Exd. Record.

**Letter of Attorney.**—Sarah Coxe, widow, whereby she did ordain and appoint and limit the use of the said real estate and direct the said William Rawle and Samuel Coates (who survived the said Phinehas Bond) and the survivor of them and the heirs and assigns of the survivor of them to grant, bargain, sell and convey, release and confirm the same with the appurtenances unto and to the use of her son John Redman Coxe his heirs and assigns forever.

Duly acknowledged and recorded in Letter of Attorney Book G. W. R. No. 1, page 180, &c.

1827  
January 20th.  
Produced and  
examined.

**Deed.**—William Rawle and Samuel Coates, surviving devisees in trust, &c., to John Redman Coxe in fee for (inter alia) the same premises. Subject to said ground rent of \$18.00.

Acknowledged same day and recorded February 21st, 1827, in Deed Book G. W. R. No. 14, page 469, &c.,

1827  
January 31.  
Produced and  
examined.

**Deed.**—John Redman Coxe and Sarah his wife to Jonathan Collom, in fee for the same premises subject to said ground rent of \$18.00.

Acknowledged February 19th, 1827, and recorded February 22, 1827, in Deed Book G. W. R. No. 14, page 477, &c.

(TITLE TO SAID GROUND RENT OF \$18.00.)

1826  
Sept. 9.  
Exd. Record.

**Deed.**—Robert Ralston, Abraham Kintzing and William Rush, trustees as aforesaid, to Jacob Griffith, his heirs and assigns, for said ground rent of \$18.00.

Duly proved same day and recorded September 18, 1826, in Deed Book G. W. R. No. 13, page 271, &c.

1831  
April 8.  
Exd. Record.

**Deed Poll.**—Isaac Griffith and Rachel, his wife, to Jonathan Collom, his heirs and assigns, extinguishing said ground rent of \$18.00.

Duly acknowledged same day and recorded April 9th, 1831, in Deed Book A. M., No. 10, page 290, &c.

1831  
April 8.  
Produced and  
examined.

**Deed.**—Jonathan Collom and Mary, his wife, to Jacob Stearly, in fee for part of the same premises (18 x 54).

Duly acknowledged same day and recorded April 9th, 1831, in Deed Book A. M., No. 10, page 291, &c.

1843  
Feb. 15.  
Exd. Record.

**Deed.**—Jonathan Collom and Mary, his wife, to David W. Collom, his heirs and assigns, for all and singular the messuages, lands, tenements, hereditaments and real estate whatever and wheresoever of him the said the Jonathan Collom. In trust as therein mentioned—during the life of said Mary and during the life of said Jonathan in case he should survive her and after their decease, in trust to grant and convey the same to such person or persons as should be entitled to same if said Mary had survived her husband and died intestate seised of said premises.



Acknowledged February 15th, 1843, and recorded July 30, 1845, in Deed Book R. L. L., No 44, page 354, &c.

Recited.

The said Mary Collom survived her husband, died intestate, leaving two children, viz: David Collom and Jonathan G. Collom and no issue of a deceased child.

1859  
Aug. 26.  
Exd. Record.

**Deed.**—David W. Collom to Lewis S. Pontzler, in fee for inter alia, a lot of ground SITUATE on the west side of Hermitage street (formerly Smith's alley) CONTAINING in breadth north and south 18 feet and extending in length or depth about 66 feet, (being part of the premises last above described) in trust to convey the same to David W. and Jonathan G. Collom in fee, discharged of all trusts.

Acknowledged August 30th, 1859, and recorded September 1, 1859, in Deed Book A. D. B., No. 78, page 413, &c.

1859  
Aug. 27.  
Exd. Record.

**Deed.**—Lewis S. Pontzler to David W. Collom and Jonathan G. Collom, in fee for inter alia, the same premises.

Acknowledged August 30th, 1859, and recorded September 1, 1859, in Deed Book A. D. B., No. 78, page 417, &c.

1859  
Aug. 30.  
Exd. Record.

**Indenture of Mortgage.**—David W. Collom and Jonathan G. Collom to the Philadelphia Saving Fund Society for \$2000.00, in one year, with interest, inter alia premises last described.

Acknowledged same day and recorded same day in Mortgage Book A. D. B., No. 39, page 193, &c.

The following proceedings were afterward had upon said mortgage, in the district court for the county of Philadelphia.

## Appearance Docket.

SEPTEMBER TERM, 1860.

H. Wharton  
552.  
Exd. Record.The Philadelphia Sav-  
ing Fund Society,  
vs.David W. Collom and  
Jonathan G. Collom.

{	Sci. fa. sur mortgage re-
	corded in M. B. A. D.
	B., No. 39, page 193.
	Exit Sept. 7, 1860.
{	Retble. 1st Mon. Octo-
	ber, 1860.
	"Made Known."

October 8, 1860. By order of Pliffs. Atty. filed judgment for want of an appearance.

Eo die damages ass'd, \$2132.67—Lev. fa. S. 60,966.

## EXECUTION DOCKET.

SEPTEMBER TERM, 1860.

H. Wharton  
966.The Philadelphia Sav-  
ing Fund Society,

vs.

David W. Collom and  
Jonathan G. Collom.

October 25th.

{	Lev. fa. (S. 60,552.)
	R. D. \$2000.00
	Int for Aug. 30, '59.
	Atty and writ 4.50
	Serv. 2.50
	Cr. .12
	Prothy. 4.75
	Sat. .12
{	Lev. fa. .75

Sold premises 1st described to F. Ladner for \$1,425.

Sold premises 2nd described to F. Ladner for \$1,200.

Sold premises last described to A. M. Grauel for \$750.

1860  
Nov. 17th.  
Exd. Record.

Deed Poll.—William H. Kern, high sheriff, to Andrew M. Granel, in fee—consideration \$750, for premises last above described.

Sold as the property of David W. Collom and Jonathan G. Collom.

Acknowledged in open district court and entered among the records thereof in Book W. 2, page 578, &c.

Recited.

Andrew M. Grauel being seised of inter alia said premises died intestate leaving no widow, but issue six children, viz: Andrew J. Grauel, Lafayette Grauel, John Grauel, Eliza Wells, Christiana De Feglie, and William Grauel to whom the same descended according to law.

The said William Grauel being seized of one full equal undivided sixth part of and in the said premises died leaving a widow—Rachel Grauel—him surviving and having first made a will.

1866  
Sept. 12th.

Will of William Grauel wherein and whereby he did nominate and appoint (the said) John Lovatt, sole executor, and did authorize, direct and empower him to sell and dispose of all his real estate at either public or private sale for the best price that one can reasonably be gotten for the same and to grant and convey the same to the purchaser or purchasers thereof without any liability on the part of the purchaser or purchasers thereof to see to the application of the purchase money.

Duly proved October 2, 1866, and registered in Will Book No. 58, page 339, &c.

1868  
May 26th.  
Exd. Record.

Deed.—Andrew J. Grauel and Amanda, his wife, Lafayette Grauel and Phebe, his wife, John Grauel Franklin S. Wells and Eliza, his wife (late Eliza Grauel) and Jean De Feglie and Christiana, his wife, (late Christiana Grauel) of the first part; John Lovatt, sole executor of William Grauel, deceased, of the second part; Rachel Grauel, widow of William Grauel, deceased, of the third part, to William Frederick Snyder, in fee for premises last above described.

(Recites a public sale by the parties of the first, second and third parts.)

Consideration, \$2,850. Stamp, \$3.00.

Acknowledged same day and recorded August 28th, 1868, in Deed Book J. T. O., No. 171, page 260, &c.

1868  
May 26th.  
Produced and  
examined.

**Deed.**—William Frederick Snyder to Andrew J. Grauel and Lafayette Grauel, in fee for inter alia the same premises. Consideration, \$2,650. Stamp, \$3.00.

Duly acknowledged June 2, 1868, and recorded August 26, 1868, in Deed Book J. T. O., No. 171, page 336, &c.

1870  
Apr. 19.  
Produced and  
Exd.

**Deed.**—Andrew J. Grauel and Amanda M., his wife, and Lafayette Grauel and Phebe, his wife to Jacob Stearly, in fee for the same premises. Consideration, \$1,000. Stamp, \$1.00.

Acknowledged same day and recorded May 2nd, 1870, in Deed Book J. A. H., No. 25, page 543, &c.

1782  
Mar. 18.  
Exd. Record.

**Deed.**—John Dickinson and Mary, his wife, to Amos Harmer, in fee for a lot of ground SITUATE on the west side of Delaware Third street in the Northern Liberties aforesaid. CONTAINING in breadth on said Third street thirty-eight feet and extending in length or depth 250 feet, reserving thereout a certain rent charge of forty Spanish milled dollars.

Acknowledged same day, recorded October 12th, 1782, in Deed Book No. 5, page 161, &c.

1783  
Sept. 15.  
Produced and  
Exd. Recited.

**Deed.**—Amos Harmer to William Side, in fee for the southernmost moiety of the last described lot of ground.

Subject to a moiety of said rent charge of forty dollars.

Acknowledged Oct. 11, 1783, not recorded.

1787  
Aug. 24.  
Produced and  
Exd.

**Deed.**—William Side and Elizabeth, his wife, to George Savell, in fee for the westernmost moiety of the lot of ground conveyed by the last deed free clear and freely and clearly acquitted, exonerated and forever discharged from the said rent charge of 40 dollars.

Acknowledged same day, not recorded.

1796  
June 30.  
Produced and  
Exd.

**Deed Poll Indorsed.**—George Savell to John Redman, in fee for the same premises.

Duly proven May 30th, 1826, but not recorded.

1790  
Sept. 21.  
Produced and  
Exd.

**Deed Poll Indorsed.**—William Side to John Redman, in fee for easternmost moiety of the lot

conveyed by the above recitel deed from Amos Harmer to William Side.

Acknowledged Sept. 25th, 1790, not recorded.

1785  
Sept. 20.  
Exd. Record.

**Deed.**—Amos Harmer and Mary, his wife, to George Savell, in fee for the northernmost moiety of the lot conveyed by John Dickinson and wife to Amos Harmer, subject to a moiety of said rent charge of 40 dollars.

Duly acknowledged Sept. 22nd, 1785, and recorded October 1st, 1786, in Deed Book No. 14. page 113, &c.

1791  
Febry. 10.  
Exd. Record.

**Deed Poll.**—James Ash, Esq., high sheriff, to John Redman, in fee for a lot of ground SITUATE on the west side of Delaware Third street in the Northern Liberties aforesaid CONTAINING in breadth on said Third street 55 feet and extending in depth along Coates street 250 feet, subject to two yearly rent charges of 20 dollars respectively and also subject to a mortgage debt of 150 L.

Taken in execution and sold as the property of George Savell.

Acknowledged May 3, 1791, and recorded in Sheriff's Deed Book C., No. 4, page 215.

Recited in  
next deed.

**The ground rents** above recited together with said mortgage debt have been purchased off by the said John Redman and extinguished, so that the premises are now free and discharged from the same.

1797  
March 30.  
Produced and  
Exd.

**Deed.**—John Redman to John Young, in fee for lot of ground SITUATE on the south side of Coates street 215 feet westward from the corner of said Coates street and Delaware Third street continued in the Northern Liberties aforesaid, CONTAINING in breadth east and west 18 feet and length north and south 74 feet more or less—the east and west sides running parallel with said Third street and also a certain gore adjoining on the east.

Reserving thereout a certain yearly ground rent or sum of 18 Spanish milled silver dollars, in equal half yearly payments on the first day of the months of January and July in each and every year free of taxes, &c.

Acknowledged June 5th, 1797, by John Young and May 24th, 1797, by John Redman and recorded August 3rd, 1802, in Deed Book E. F., No. 9, page 450, &c.

1802  
Exd. Record.

**Deed.**—John Young and Elizabeth, his wife, to Robert Andrews and Amelia, his wife, their heirs and assigns forever for the same premises, subject to said ground rent of eighteen dollars.

Acknowledged same day and recorded Aug. 3, 1802, in Deed Book E. F., No. 9, page 453, &c.

Recited.

And the said Robert Andrews sometime in the month of July, 1805, departed this life by reason whereof and according to the then existing laws of the Commonwealth of Pennsylvania the whole of said premises became vested in the said Amelia by survivorship in fee. And the said Amelia afterwards intermarried with a certain Evans Perkins who is also since deceased.

1827  
May 10.  
Exd. Record.

**Deed.**—Amelia Perkins, widow, to Jacob F. Hoeckley, in fee. Consideration, \$1.00 for the same premises, subject to the payment of said ground rent or sum of eighteen dollars.

Duly acknowledged same day and recorded April 9th, 1831, in Deed Book A. M., No. 10, page 282, &c.

(TITLE TO SAID GROUND RENT OF \$18.00.)

1807  
Nov. 9th.

**Will** of John Redman wherein and whereby, after sundry bequests, he did give, devise and bequeath all the rest, residue and remainder of his estate in Pennsylvania, and all and every his personal property of every description whatsoever unto Phinehas Bond, William Rawle and Samuel Coates, their heirs and assigns forever, and to the survivor of them, his heirs and assigns forever, upon the special trust and confidence, &c., as hereinbefore recited.

Duly proven and registered at Philadelphia in Will Book No. 2, page 278, &c.

1826  
Nov. 10th.  
Exd. Record.

**Letter of Attorney.**—Sarah Coxe, widow,

whereby she did ordain and appoint and limit, &c., as hereinbefore recited.

Duly acknowledged and recorded in Letter of Attorney Book G. W. R., No. 1, page 180, &c.

1827  
January 30.  
Produced and  
Exd.

Deed.—William Rawle and Samuel Coates, surviving devisees in trust, &c., to John Redman Coxé, in fee for inter alia said ground rent or sum of \$18.00.

Acknowledged same day and recorded February 21st, 1827, in Deed Book G. W. R., No. 14, page 469, &c.

1827  
Dec. 8th.  
Produced and  
Exd.

Deed.—John Redman Coxé and Sarah, his wife, to Jacob F. Hoeckley, his heirs and assigns, for inter alia said yearly ground rent or sum of \$18.00 whereby the same merged in the fee.

Acknowledged same day and recorded April 9th, 1831, in Deed Book A. M., No. 10, page 285, &c.

1827  
Dec. 6th.  
Produced and  
Exd.

Deed.—Jacob F. Hoeckley to William Martin, his heirs and assigns forever for said gore or strip of ground, in trust to permit and suffer the said Jacob F. Hoeckley, his heirs and assigns, to grant, bargain, sell and convey the same in fee simple or for such other estate and estates as he or they should deem proper.

Acknowledged December 7th, 1826, and recorded April 9th, 1831, in Deed Book A. M., No. 10, page 284, &c.

1829  
Produced and  
Exd.

Deed.—Jacob F. Hoeckley to John Shaw, in fee for premises last described, reserving a ground rent of \$45.00 per year payable half yearly on the first day of the months of January and July.

Acknowledged August 1, 1829, and recorded March 24th, 1831, in Deed Book A. M., No. 9, page 497, &c.

1831  
March 22.  
Produced and  
Exd.

Deed Indorsed.—John Shaw to Jacob Stearly, in fee for same premises. Consideration, \$115.00, subject to said ground rent of \$45.00.

Acknowledged same day and recorded March 24th, 1831, in Deed Book A. M., No. 9, page 500, &c.

1831  
April 6.  
Produced and  
Exd.

**Deed Poll Indorsed.**—Jacob F. Hoeckley and Anna Elizabeth, his wife, to Jacob Stearly, his heirs and assigns. Consideration, \$700. Granting and extinguishing said ground rent or sum of forty-five dollars (\$45.00.)

Acknowledged April 7th, 1831, and recorded April 9th, 1831, in Deed Book A. M., No. 10, page 288, &c.

1831  
April 8th.  
Produced and  
Exd.

**Deed Poll.**—William Martin (consideration, \$1.00) releasing unto the said Jacob Stearly, his heirs and assigns, all his estate, right, title, interest, &c., in said gore or strip of ground.

Acknowledged same day and recorded April 9th, 1831, in Deed Book A. M., No. 10, page 289, &c.

1796  
Nov. 30.  
Exd. Record.

**Deed.**—John Redman to Thomas Hess, in fee for lot of ground SITUATE on the south side of Coates street 199 feet west of Delaware Third street in the Northern Liberties aforesaid, CONTAINING in breadth east and west 16 feet and in length north and south about 74 feet, reserving thereout a certain yearly ground rent or sum of \$16.00 payable half-yearly on the first day of May and November in every year.

Acknowledged Dec. 24th, 1796, by Thomas Hess, and Jany. 18, 1797, by John Redman and recorded August 22nd, 1832, in Deed Book A. M., No. 24, page 755, &c.

1799  
May 1.  
Exd. Record.

**Deed.**—Thomas Hess and Catharine, his wife, to Levi Amber, in fee. Consideration, 100 pounds for same premises, subject to said ground rent of \$16.00.

Acknowledged May 14th, 1799, and recorded January 31, 1832, in Deed Book A. M., No. 18, page 255, &c.

1804  
April 28.  
Exd. Record.

**Deed Poll Indorsed.**—Levi Amber to Peter Richmond, in fee for same premises. Consideration, \$333 1-3, subject to said ground rent of \$16.00.

Acknowledged April 30th, 1804, and recorded January 31, 1832, in Deed Book A. M., No. 18, page 257, &c.



1842  
May 11.  
Produced and  
Exd.

**Deed.**—Peter Richmond to Jacob Stearly, in fee for premises south side of Coates street 199 feet west of Delaware Third street in the Northern Liberties aforesaid, CONTAINING in front on Coates street 14 feet seven inches and extending in length or depth southward 17 feet gradually widening to the breadth of sixteen feet and from thence extending the last mentioned breadth of sixteen feet the further depth of 57 feet. Consideration, \$733.34, subject to said ground rent of \$16.00.

Duly acknowledged May 11, 1842, and recorded May 12th, 1842, in Deed Book G. S., No. 38, page 670, &c.

(Title to the said ground rent of \$16.00.)

(For previous title see title to ground rent of \$18.00 on premises adjoining to the west.)

1832  
July 9.  
Produced and  
Exd.

**Deed.**—Jacob F. Hoeckley and Anna Elizabeth, his wife, to John Kessler, his heirs and assigns, for inter alia said ground rent of \$16.00.

Acknowledged same day and recorded July 23rd, 1832, in Deed Book A. M., No. 26, page 582, &c.

1838  
Aug. 3.  
Exd. Record.

John Kessler afterward died seised of said ground rent. WILL of John Kessler, wherein and whereby he did give, devise and bequeath unto his son, John Kessler, and to his grandson, John Kessler, (party to the next deed) all and singular the ground rents which he might die seised of, &c., issuing out of lots, &c., in the city of Philadelphia, to hold to said son, John Kessler, during life and immediately after his decease to his said grandson, John Kessler, his heirs and assigns, in trust for the benefit of testator's daughter Martha West, &c., and giving authority to release ground rents, &c.

Duly proven March 26th, 1840, and registered in Will Book No. 14, page 125, &c.

1868  
Nov. 23rd.  
Produced and  
Exd.

**Deed.**—John Kessler, Jr., (grandson) trustee as aforesaid, to Jacob Stearly, his heirs and assigns, extinguishing said ground rent of \$16.00 in pursuance of the power and authority given in and by said recited will.

Acknowledged same day and recorded Nov. 24th, 1868, in Deed Book J. T. O., No. 198, page 15, &c.

1797  
March 1.  
Exd. Record.

**Deed.**—John Redman to Caspar Albert, in fee for premises south side of Coates street 233 feet westward from Delaware Third street, continued in the Northern Liberties aforesaid CONTAINING in breadth east and west 16 feet and extending in length north and south parallel with the line of Third street about 74 feet more or less, reserving ground rent of 16 Spanish milled silver dollars in equal half-yearly payments on the first day of January and July of every year.

Acknowledged May 26th, 1797, and recorded February 23rd, 1818, in Deed Book M. R., No. 18, page 100, &c.

1802  
Aug. 7.  
Exd. Record.

**Deed.**—Caspar Albert and Eve, his wife, to Martha Jones and Esther Timany, in fee for the same premises, subject to said ground rent of \$16.00.

Acknowledged August 10th, 1802, and recorded February 23, 1818, in Deed Book M. R., No. 18, page 102, &c.

1812  
Aug. 10.  
Exd. Record.

**Deed Poll Indorsed.**—Martha Jones to Esther Timany, her heirs and assigns, for all her moiety, estate, right, title, and interest in said premises, subject to said ground rent of \$16.00.

Acknowledged same day and recorded Feby. 23rd, 1818, in Deed Book M. R., No. 18, page 104, &c.

Recited.

And the said Esther Timany married Lancaster Thomas.

1829  
March 26.  
Consideration  
\$190.00  
Exd. Record.

**Deed Poll.**—Jacob Strembeck, Esq., high sheriff, to Peter H. Edenborn, in fee for the same premises, subject to the said ground rent or sum of \$16.00. Taken in execution and sold Wednesday, March 18th, 1829, as the property of Esther Thomas.

Acknowledged in open district court on June 1, 1829, and entered among the records thereof in Book E, page 270, and recorded in the office of the

Recorder of Deed at Philadelphia on May 16th, 1831, in Deed Book A. M., No. 14, page 171, &c.

1831  
April 29th.  
Consideration  
\$500.  
Exd. Record.

**Deed.**—Peter H. Edenborn and Susan, his wife, to John Kessler, in fee for same premises, subject to said ground rent of \$16.00.

Acknowledged same day and recorded May 16th, 1831, in Deed Book A. M., No. 14, page 169, &c.

(TITLE TO SAID GROUND RENT OF \$16.00.)

For prior title see title to ground rent of \$18.00 on premises adjoining on the east.

1831  
July 9th.  
Produced and  
Exd.

**Deed.**—Jacob F. Hoeckley and Anna Elizabeth, his wife, to John Kessler, his heirs and assigns, releasing and extinguishing said ground rent of \$16.00, (whereby said ground rent merged).

Acknowledged July 9th, 1831, recorded July 11th, 1831, in Deed Book A. M., No. 12, page 674.

1833.  
April 3.  
Consideration  
\$900.  
Produced and  
Exd.

**Deed.**—John Kessler to Jacob Stearly, in fee for premises last described.

Acknowledged same day and recorded April 8, 1833, in Deed Book A. M., No. 33, page 577, &c.

1796  
Nov. 30.  
Exd. Record.

**Deed.**—John Redman to Levi Amber, in fee for premises south side of Coates street 184 feet westward from Delaware Third street in the Northern Liberties aforesaid CONTAINING in breadth east and west 15 feet and in length or depth north and south 74 feet, reserving thereout a yearly ground rent of 15 Spanish milled dollars payable in equal half-yearly payments on the first day of the months of May and November in every year.

Acknowledged January 18th, 1797, by John Redman and December 24th, 1796, by Levi Amber and recorded January 25th, 1809, in Deed Book E. F., No. 32, page 350, &c.

1798  
January 25.  
Consideration  
70 L.  
Produced and  
Exd.

**Deed.**—Levi Amber and Susanna, his wife, to Ulrich Ruckstuhl, in fee for the same premises together with a certain gore or triangular piece of ground adjoining on the northeast corner of the last described lot, CONTAINING in breadth on said Coates street one foot five inches or thereabouts and in length extending southward eighteen feet

gradually narrowing to a point at the south end (said gore being part of a lot 13 feet four inches in breadth on said Coates street, which the said John Redman by indenture dated October 19th, 1797, and granted unto Levi Amber in fee), under and subject to the payment of said yearly ground rent of \$15.00.

Duly acknowledged January 26th, 1798, and not recorded.

1814  
April 4.  
Produced and  
Exd.

**Deed.**—Ulrich Ruckstuhl and Margaret, his wife, to Jacob Stearly, in fee for the same premises, subject to said ground rent of \$15.00. Consideration, \$850.00.

Duly acknowledged same day and recorded May 9th, 1823, in Deed Book I. H., No. 9, page 1, &c.

(TITLE TO SAID GROUND RENT OF \$15.00.)

1805  
Aug. 13.  
Exd. Record.

**Deed.**—John Redman to the corporation by the name, style and title of "The Trustees of the Second Presbyterian Church in the City of Philadelphia," their successors and assigns, for said ground rent of \$15.00. Consideration, \$1.00.

Duly proven December 28th, 1808, and recorded in Deed Book E. F., No. 32, page 355, &c., on January 25th, 1809.

1820  
January 12.  
Consideration  
\$180.  
Exd. Record.

**Deed.**—"The Trustees of the Second Presbyterian Church in the City of Philadelphia" to James Lyle, his heirs and assigns, for said ground rent of \$15.00.

Recorded January 13th, 1820, in Deed Book I. W., No. 5, page 88, &c.

The said James Lyle died seised of the said ground rent of \$15.00.

1826  
July 24th.

**Will** of James Lyle wherein he authorized and empowered his executors and the survivors and survivor of them to make sale and conveyance of any part or the whole of his estate, real and personal, and to vest full and perfect title in the purchasers and nominated John B. Newman, Hartman Kuhn and Henry Beckett as executors.

Duly proven and registered in Will Book No. 8, page 618, &c.

1830  
April 14.  
Consideration  
\$250.  
Produced and  
Exd.

**Deed Poll.**—John B. Newman, Hartman Kuhn and Henry Beckett, executors of the last will and testament of James Lyle, deceased, to Jacob Stearly, his heirs and assigns, extinguishing said ground rent of \$15.00.

Acknowledged same day and recorded April 15th, 1830, in Deed Book G. W. R., No. 36, page 371, &c.

1831  
April 8th.  
Produced and  
Exd.

**Deed.**—Jacob Stearly and Mary M., his wife, to Isaac Griffith, his heirs and assigns. Consideration, \$300, granting and confirming unto said Isaac Griffith, his heirs and assigns, a certain yearly rent charge or sum of eighteen Spanish milled silver dollars to be yielding and paying and to be had, taken and received in half-yearly payments on the first day of the months of October and April in every year, without deduction for taxes, &c., out of premises SITUATE on the south side of Coates street at the distance of 215 feet west of Delaware Third street in the Northern Liberties aforesaid, CONTAINING in breadth east and west eighteen feet and in length or depth north and south between parallel lines with said Third street about seventy-four feet more or less. And also out of a certain gore or strip of ground SITUATE on the south side of Coates street adjoining the above described lot on the east, CONTAINING in breadth on said Coates street about seventeen inches and in length southward seventeen feet gradually narrowing to a point.

Acknowledged same day and recorded April 9th, 1831, in Deed Book A. M., No. 10, page 295, &c.

Recited.

The said Isaac Griffith being so seised of inter alia said ground rent of \$18.00, departed this life.

**Will** of Isaac Griffith, whereby he did give and devise said ground rent in his residuary estate unto his son Lukens Griffith, his heirs and assigns.

Duly proved July 6th, 1849, and remaining on

1848  
June 14.  
Exd. Record.

record at Philadelphia in Will Book No. 22, page 333, &c.

1850  
Dec. 21.  
Exd. Record.

**Letter of Attorney.**—Lukens Griffith and Sarah, his wife, to Anthony P. Morris, giving full power to release and extinguish said ground rent of \$18.00.

Duly acknowledged and recorded in Letter of Attorney Book G. W. C., No. 1, page 598, &c.

Feby. 5th.  
1851  
Produced and  
Exd.

**Deed.**—Lukens Griffith and Sarah, his wife, by their said attorney, to Jacob Stearly, his heirs and assigns releasing and extinguishing said ground rent of 18 Spanish milled silver dollars. Consideration, \$275.

Acknowledged same day and recorded February 10th, 1851, in Deed Book G. W. C., No. 82, page 202, &c.

By virtue of the several conveyances made to said Jacob Stearly as hereinbefore recited, he became seised in his demesne as of fee of the premises in question described at the head of this brief, and being so seised thereof departed this life on the 22nd day of July, Anno Domini 1883, having first made and published his last will and testament as follows:

1882  
Mar. 14.  
Exd. Record.

**Will of Jacob Stearly**, deceased, wherein and whereby, after directing the payment of his just debts and funeral expenses, he did will as follows, viz: ITEM—I give, devise and bequeath all the rest, residue and remainder of my estate, real and personal and mixed, whatsoever and wheresoever the same may be situate and of which I may die seised, possessed or entitled to in manner following. to wit, one full equal fifth part thereof unto my grandchild, Clara V. Smith, her heirs, executors, administrators and assigns forever absolutely. One full equal fifth part thereof unto my grandchild, Emma E. Stearly, her heirs, executors, administrators and assigns forever absolutely. One full equal fifth part thereof unto my grandchild, Ida I. Newton, her heirs, executors, administrators and assigns forever absolutely. One full

equal fifth part thereof unto my grandchild, Mary Rainier, her heirs, executors, administrators and assigns forever absolutely, and the remaining one-fifth part thereof unto my grandchild Mary Leath Courtney, her heirs, executors, administrators and assigns forever absolutely.

Duly proven July 30th, 1883, and registered at Philadelphia in Will Book No. 111, page 263, &c.

Recited.

All of the devisees named in said recited will are of full age except the said Mary Leath Courtney.

1883  
December 29th?

**At an orphans' court** for the city and county of Philadelphia, held at Philadelphia, upon the petition of the said Mary Leath Courtney, who was then above the age of fourteen years, The Fidelity Insurance, Trust and Safe Deposit Company was appointed guardian of her estate.

1884  
Nov. 29th.  
Exd. Record.

**At an orphans' court** for the city and county of Philadelphia, held at Philadelphia, the petition of the said "The Fidelity Insurance, Trust and Safe Deposit Company," guardian as aforesaid, was presented, setting forth "That the said Mary Leath Courtney is seised in her demesne as of fee of and in an equal undivided fifth part or share of and in the real estate therein particularly described (being the premises conveyed by the next deed.) That all the other parties interested in said real estate being sui juris are anxious and desirous of disposing of the same." That Peter S. Dildine, of the city of Philadelphia, has offered to purchase the said real estate for the price or sum of \$16,000.00, clear of all encumbrances, and all the other owners of said real estate have agreed to sell at said price and are anxious and desirous that the proper and necessary deeds and assurances for said real estate should be executed to the said Peter S. Dildine and a perfect title for the same made to him, but are prevented from so doing on account of the inability of the petitioners to join with them in the execution and delivery of said deeds as guardian aforesaid without the consent and order of the

court. That the said price offered for said real estate is much greater than the assessed value of the same \* \* \* \* and that the said amount is, to the best of petitioner's knowledge and belief, as large a price as can now be obtained for said property. That is to the advantage of said minor's estate that said real estate should be sold, inasmuch as the same is in great need of repair and in a dilapidated condition." The petitioners therefore prayed the court to approve of the price offered for said real estate and authorize them to sell the said minor's undivided fifth interest therein for one-fifth of the said price offered as aforesaid, viz: \$3,200.00, and that they be authorized, ordered and directed as guardian of said Mary Leath Courtney to join with the other owners of the said real estate in the execution and delivery of the proper and necessary deed or deeds and other assurances needful and necessary for vesting and conveying said real estate to the said Peter S. Dildine in fee simple.

WHEREUPON the said court, upon due consideration of the said petition, ordered and decreed that the said "The Fidelity Insurance, Trust and Safe Deposit Company," guardian of said minor be authorized to sell the said minor's one full equal and undivided fifth part or share of and in the real estate in said petition described, for the price or sum of \$3,200.00, to Peter S. Dildine, his heirs and assigns, and that the said "The Fidelity Insurance and Safe Deposit Company," guardian as aforesaid, be authorized and directed to make, execute and deliver, or join with the other owners of said real estate in the execution and delivery of all and every deed or deeds or other assurances in the law necessary to vest said minor's undivided fifth part or share in said real estate in the said Peter S. Dildine, in fee simple, and that said minor's undivided interest in said real estate so sold be and remain to the said Peter S. Dildine, his heirs and assigns, firm and stable forever, and



the said guardian was thereby authorized to receive and receipt for said purchase money, and the said court further ordered that security be entered by said guardian in the sum of \$6,400.00, and approved of the bond of the said "The Fidelity Insurance and Safe Deposit Company" as such security, which security has been duly entered.

**Deed.**—Luther G. Smith and Clara V. Smith, his wife, Emma E. Stearly, John Newton and Ida I. Newton, his wife, and Mary Rainer of the first part, and "The Fidelity Insurance, Trust and Safe Deposit Company," guardian of the estate of the said Mary Leath Courtney, a minor, of the second part, to Peter S. Dildine, in fee for the premises in question described at the head of this brief, described however, in five separate lots as shown upon the plan on the second page of this brief. Consideration, \$16,000.

Duly acknowledged the 16th day of December, 1884, and recorded December 20th, 1884, in Deed Book J. O. D., No. 238, page 528, &c.

1884  
Dec. 16th.  
Produced and  
Exd.

## CHAPTER XIII.

### REAL ESTATE AGENTS AND BROKERS.

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#### **190. Modern Real Estate Business. Who Is a Broker?**

The business of an old-time conveyancer consisted for the most part of preparing legal documents of all description, drawing deeds, mortgages and like instruments, drafting wills, etc., and searching title. The buying and selling of real estate was at the most a mere incident of his business. From the very nature of the business transacted the old-time conveyancer was a man of great learning. He studied faithfully and served a long apprenticeship before he essayed to start in business for himself. His knowledge of the technical points of conveyancing and the law of real estate was profound. Indeed, fifty years ago many of the conveyancers were better versed in real estate law than most lawyers. A radical change has come over the business, due mainly to the rise of the title insurance companies, as set forth in the next chapter. In the larger cities, few, if any, real estate agents search title. About all the conveyancing that a modern real estate agent now does is drawing agreements, instruments and leases. The greatest bulk, by far, of his business is buying, selling and renting real estate on commissions. He is more of a broker than a conveyancer, although that term is still used in conjunction with "agent" and "broker." It is the modern business we are interested in and, therefore, in this chapter we will treat of the law relating to real estate agents and brokers. The law requires all real estate brokers to be licensed

so that it becomes necessary to know who is and who is not a broker.

A broker is a person engaged in the negotiation of contracts. Persons whose business it is to bring buyer and seller together (*Keys v. Johnson*, 68 Pa. 43). A real estate broker is one who engages in the purchase and sale of real estate as a business and occupation and holds himself out to the public in that character and capacity (*Chadwick v. Collins*, 26 Pa. 138).

#### **192. Real Estate Broker Must be Licensed.**

By act of assembly (April 10, 1849, P. L. 573, Sec. 8) in Pennsylvania all real estate brokers must be licensed. This license is issued by the county treasurer and may be obtained upon application to the treasurer of the county wherein the applicant resides and does business. The license authorizes the broker, under the seal of said county to exercise his occupation for the term of one year from the date of the commission. Each and every succeeding year he must pay a new license fee and obtain a new license. Real estate brokers must pay fees for the licenses depending upon the amount of business they do. By Act of April 15, 1850 (P. L. 772), as amended by Act of June 7, 1901, P. L. 534, Sec. 1, they must pay for use of the Commonwealth a tax equal to 3% of their total business, in addition to the license fee, and this whether the business is carried on by individuals, firms, or corporations (Act of April 14, 1905, Sec. 1, P. L. 161). The mercantile appraisers are required to appraise the amount of business and assess said brokers accordingly, just as persons engaged in mercantile business.

In Philadelphia, this is usually done by the mercantile appraisers distributing blanks ten days before the time of return, which blank the broker is required to fill out and set forth under oath the volume of business he does.

#### **193. Effect of Not Obtaining a License.**

If a real estate broker is not properly licensed one of the serious effects that follows is, that he cannot recover his commission should he be compelled to sue therefor. The license must be obtained and tax paid before the transaction sued on; a subsequent compliance with the law by the broker will not cure a previous illegal transaction (*Luce v. Cook*, 227 Pa. 224). Not every person who sells real estate for another is necessarily

such a broker within the meaning of the act as to require him to be licensed. An occasional or casual sale does not make the negotiator thereof a broker. So it was said in a case (*Chadwick v. Collins*, 26 Pa. 138) that any person may lawfully employ one who is not a real estate broker to buy or sell real estate, and where such employment takes place it must be paid for. The test seems to be whether or not the person is engaged in the business of real estate broker, not whether he makes a sale of real estate. In the case of *Woods v. Heron* (229 Pa. 625), the Supreme Court said, "A person suing for commission on sale of real estate will not be barred from recovery by reason of not having a broker's license, where there is no evidence that he was doing business as a real estate broker at the date of the contract set up by him.

#### 194. When a Broker Is Entitled to His Commissions.

A real estate broker has earned his commission when he procures a party with whom his principal is satisfied, who actually contracts for the property at a price satisfactory to the owner even though the purchaser afterward attempts to avoid the contract (*Buchfield v. Griffith*, 10 Sup. Ct. 618; *Holmes v. Neaffi*, 151 Pa. 392; *Hipple v. Laird*, 189 Pa. 472). Where a sale has resulted from the efforts of the broker, even where such efforts amounted to a mere introduction of the property to the buyer, whether by advertisement or sign, he is entitled to his commissions (*Keys v. Johnson*, 68 Pa. 42). Says the Superior Court (*Peters v. Holmes*, 45 Superior Ct. 278), "It is not material that the sale was made directly with the owner if the broker brought the parties together and a sale resulted from the broker's intervention." "When a real estate broker is duly authorized to sell property by a private sale and has commenced negotiations with a purchaser the owner cannot, while such negotiation is pending, take it into his own hands and complete it, either above or below the price first mentioned, and refuse to pay commissions (*Warne v. Johnson*, 48 Sup. 98). Where a broker is employed to negotiate a loan he is entitled to his commission when he brings to his principal a party ready and willing to take the loan (*Fenn v. Dickey*, 178 Pa. 258). If a sale fails because the vendor is unable to make title, his broker is nevertheless entitled to his commissions (*Kifer v. Yoder*, 198 Pa. 308). An owner, who promises to pay a broker commissions if he sells his prop-

erty at a certain price, and refuses to sell when the broker produces a purchaser willing to buy at that price, is nevertheless liable for the commissions (*Miller v. Kenneck*, 20 D. R. 706).

An agreement under seal by the vendor promising to pay a commission to an agent, whether the sale be made by him or any other person is valid and binding, the court holding that the seal imported a consideration and that the mere harshness of the bargain was no defense (*Ownes v. Werle*, 14 Sup. Ct. 536).

**195. When a Real Estate Broker is Not Entitled to Commissions.**

Before a real estate broker is entitled to his commissions there must, of course, be sale, although this does not mean that a sale must be consummated by him; it is enough if he brings the parties together and sale is consummated directly by the parties. A broker employed to sell real estate is entitled to his commissions when he has procured a purchaser satisfactory, bona fide, to the vendor, with whom a valid enforceable agreement of sale is executed even though afterwards the vendee refuses to take title (*Hipple v. Laird*, 189 Pa. 472; *Seabury v. Insurance Co.*, 205 Pa. 234; *Taylor v. Foltz*, 24 Pa. Super. 1). But it seems, not unless some purchase money is paid on account which the vendor has forfeited (*Schurr v. Warnick*, 11 D. R. 1).

A real estate broker must not be disloyal or he forfeits his right to commissions. Thus, where a broker concealed from his principal the name as well as the fact that a purchaser was the owner of an adjoining lot so that said principal would not raise his price, the court held the broker was not entitled to his commissions (*Wilkinson v. McCullough*, 196 Pa. 205).

Another and more familiar example of disloyalty is where a broker secretly represents both seller and buyer. An agent must not act for both parties. If he attempts to represent both vendor and vendee without disclosing to them that he so represents them, he cannot recover his commissions from either (*Addison v. Wanamaker*, 185 Pa. 536; *Marshall v. Reed*, 32 Pa. Superior Ct. 60). Subsequent ratification like prior permission excuses the misconduct and entitles the broker to his commission as against the one who condones the misconduct (*Moore v. Grow*, 1 Sup. Ct. 125). If an agent is to represent both parties it must be expressly agreed by them to pay him a commission before he can recover (*Maxwell v. West*, 23 Pa. C. C. 302).

Unless the broker who brought about the sale was actually employed to act by the owner he cannot recover against him (*Wireman's Estate*, 43 W. N. C. 334; *Samuels v. Luckenbach*, 205 Pa. 428; *Henderson v. Sonneborn*, 30 Pa. Superior Ct. 182). When a real estate broker's employment is by its terms not exclusive and his commissions are made conditional upon the actual securing of a signature to a lease and a down payment thereon, commissions are not earned by the broker merely bringing together the owner of the property and a prospective tenant (*Barber v. Miller*, 41 Superior Ct. 442).

**196. Relation of Real Estate Broker to Client Regarded by Law as a Confidential One.**

The relation of a real estate broker to his client is a confidential one and, therefore, he must be loyal and steadfast in his allegiance. Aside from the penalty inflicted by law upon a disloyal agent it is to the best interest of a broker to make as advantageous bargain for his client as possible, otherwise he will soon find himself discredited and his business ruined. An agent who deliberately buys from a client through a straw man and re-sells to a purchaser for a higher price is guilty of a gross fraud, the discovery of which will inevitably result in destroying his business reputation, while he will be compelled by the court to return his ill-gotten gains. The courts of equity are prompt to give relief when such a betrayal of confidence takes place, no matter under what device concealed (*Power v. Black*, 159 Pa. 153). No agent ought, therefore, ever purchase from his principal unless he does it openly and not even then if he does it merely for the purpose of re-selling to a person whom he knows is desirous of purchasing.

**197. Authority of Real Estate Agent to Act.**

The general rules of the law of agency apply to real estate agents. In other words, he has not only such authority as his principal expressly gives him, but also such as is apparently conferred upon him by conduct of his principal. Thus, where a real estate broker acts contrary to his instructions, his principal will be bound by such acts as are within the scope of the authority which the agent was held out to the world to possess (*McNeile v. Cridland*, 168 Pa. 16; *Grasseli Chemical Co. v. Biddle Co.*, 22 Pa. Superior Ct. 426). So, too, an act done in

excess of authority, if ratified either expressly or by conduct becomes just as binding upon the principal as though he previously authorized it. Thus, where an agent sells for a less price than that fixed by the owner, if the owner accepts the deposit money knowing of his agent's violation of instructions, he is held to have ratified the bargain. It has been held (*Phila. Trust Co. v. Roberts*, 14 W. N. C. 123; *Cavanaugh v. Buehler*, 120 Pa. 441), in case of a loss through embezzlement, where an agent negotiating a loan is agent for both lender and borrower that the lender should suffer in preference to the borrower because he permitted the transaction to be conducted in such a way as to give opportunity for the loss to occur. It should be remembered that authority to loan money and take security for its payment implies no authority to collect it (*Isaacs v. Zugsmith*, 103 Pa. 77). Nor does the authority to enter into a lease for the principal imply any authority in the agent to cancel or receive a surrender of it.

Authority for an agent to sign an agreement of sale must be in writing else under the State of Frauds it would not be binding on the principal (*Parish v. Koons*, 1 Pars. 78; *Darlington v. Darlington*, 160 Pa. 65). Nor can a lease for a longer term of three years be made by an agent unless his authority be in writing. It is, therefore, good practice for every broker to require his principal to give him written authority both to sell and lease, as well as stipulate the commissions to be paid. In this way much misunderstanding and litigation may be avoided.

#### 198. When a Broker is Personally Liable.

The principal, unless bound by agreement for a definite period, may revoke the agency at any time, but he cannot take his property out of the broker's hands during the pendency of negotiations for the mere purpose of depriving the broker of his commissions (*Kelly v. Marshall*, 172 Pa. 396; *Black v. Pentony*, 30 Superior 41). Where the agent has partly performed his contract he is, of course, entitled to some compensation when his authority is revoked (*Stamets v. Denniston*, 193 Pa. 548).

#### 199. When a Broker is Personally Liable.

Every agent impliedly agrees when employed that he will use reasonable care, skill and diligence in performing his duties. As said by Mr. Justice Coulter, in *Wingate v. Mechanics' Bank*, 10

Pa. 108: "If an agent undertakes to do a specific thing for a stipulated reward, he is bound to exercise due diligence to accomplish what he has agreed to do, and to observe good faith toward his principal in every step, either of success or failure towards accomplishing the end. The law implies a promise from brokers, bankers, agents and attorneys that they will severally in their respective callings exercise competent skill and proper care in the service they undertake to perform, in which, if they fail, an action lies to recover damages for breach of their implied promise."

By law, whenever a person presumes to act for another without authority, or if he exceeds his authority, he is personally liable to a person with whom he deals for his principal. So, where an agent bid at a sheriff's sale a sum higher than he was authorized to bid he became personally liable and not the principal (*Hampton v. Specknagle*, 9 S. & R. 212; *Simpson v. Kerkeslager*, 41 Superior Ct. 347; *Wolf v. Wilson*, 28 Superior Ct. 511). Should the principle, however, ratify the excess of authority the principal becomes liable, and the personal liability of the agent disappears (*Hopkins v. Everely*, 150 Pa. 117).

Mr. Fallon, in his excellent book on conveyancing, quotes the three cases under which an agent may be held personally liable as follows:

"1. Where the agent makes a false representation of his authority with intent to deceive.

2. Where, with knowledge of his want of authority, but without intending fraud, assumes to act as though he were fully authorized.

3. Where he undertakes to act bona fide, believing he has the authority but in fact has none, as in case of an agent acting under a general power of attorney."

In conclusion, it may be said, highest fidelity to client, fair dealing with others has a reward which should make such conduct attractive aside from the penalties that are visited upon those guilty of breach of faith.



## CHAPTER XIV.

### SETTLEMENTS. TITLE INSURANCE COMPANIES.

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#### **200. Title Insurance Companies.**

As before stated, in recent years a remarkable change has come over the business of conveyancing, especially in the larger cities, due mainly to the modern tendency of specialization in all business. In the real estate business it has resulted in the formation of companies making a specialty of searching and insuring titles, called title insurance companies.\* In Philadelphia, fifty years ago a conveyancer, besides drawing the necessary papers, always made the title searches, the correctness of which he certified to by signing the brief of title. There was, however, no guarantee other than the personal integrity and reputation of the man (*Watson v. Muirhead*, 57 Pa. 161). But in those days this was no small thing. The conveyancers were a splendid set of men, proud of their calling and jealous of their unblemished reputations. They were well grounded in the law and their opinions on real estate law were often sought after as eagerly as a lawyer's. Indeed, the examinations necessary to gain admission to their conveyancers' associations were considered in those days to be more difficult than the lawyer's examination for admission to the bar. Forty years ago saw the incorporation of the first title insurance company† in Pennsylvania, in fact in the world. This company was organized by several members of the Con-

\*See an interesting address of Emil Rosenberger, president of the Real Estate Title Insurance and Trust Co., made to Real Estate Brokers' Association of Philadelphia, March 2, 1911, published by Real Estate Title and Trust Co.

†The Real Estate Title, Trust and Insurance Co., Philadelphia, Pa.

veyancers' Association who saw the value of co-operation as well as specialization in the field of title searching. They foresaw that the time was coming when people would not be satisfied with the guarantee consisting solely of an individual's integrity, however spotless, but would demand some financial assurance. Accordingly, the new company issued a policy of title insurance backed by its capital, guaranteeing its searches. So successful was this first company that others rapidly followed until nowadays most all the searching in Philadelphia is done by these companies.

The old time conveyancers have practically disappeared. Few modern conveyancers bother with searching title, and the profession of conveyancing as once understood no longer exists. The old time conveyancers have been replaced by the modern real estate brokers, whose special business it is to buy and sell real estate for others. He still draws agreements and prepares the instruments of conveyancing, but leaves the field of title searching to the title insurance companies, who do it more expeditiously and perhaps better than he could. The modern real estate broker is not so well grounded in the law as the old time conveyancer, nor does he need to be for questions of defect in title are no longer for him to decide, but are determined by the experts employed by the title companies. All in all, however, the real estate business has lost nothing by its abandonment of title searching. Rather have brokers been enabled to turn their energies in other directions of their vast field. However this may be, the title companies are here to stay, and it becomes necessary therefore in a modern book to dwell briefly upon the methods by which the title companies carry on business, and the way settlements are conducted.

#### **201. Application for Title Insurance.**

The application for title insurance is usually made by the agent of the vendee, for the vendee by custom in this State bears the costs of its examination fees. The application blanks are obtainable at any of the title companies and are similar to the one set out on page 249. The application is usually filled up by the company's clerk, and signed by the applicant or his agent, to whom he issues a card receipt containing the number of the application and the rate to be charged therefor. The cost varies with the amount of insurance desired. The minimum rate for a

## Form of Application for Title Insurance.

No. 33967.

PHILADELPHIA, .....

The undersigned hereby applies to

## THE ..... TITLE AND TRUST COMPANY

for an Insurance in its usual form, in the sum of \$..... against liens or defects in title affecting the premises hereinafter described.

It is agreed that the following statements are correct and true to the best of the applicant's knowledge and belief:—

Interest to be insured.	<i>Mortgagee.</i>
Name of Insured.	<i>H. B. BUILDING AND LOAN ASSOCIATION (Owner's Certificate to Owen Johnson.)</i>
Address of Insured.	
Description of the lot and Buildings.	The Company will not Guarantee Accuracy of Description unless furnished with an Official Survey.  <i>North side of X Street Ninety feet West of Y Street; sixteen feet on X Street by Seventy-seven feet parallel to Y Street to a three feet alley.</i>
Ward.	<i>50th.</i>
House No.	<i>314 "X" Street.</i>
Title vested or to be vested in Insured by?	<i>Mortgagee.</i>
Address of grantor or mortgagor.	<i>314 "X" Street.</i>
Who holds possession, and under whom?	<i>Owner.</i>
Ground-rents and incumbrances, decedent's debts, mechanics' and municipal claims known or alleged to exist—stating which are to remain and which not.	<i>Mortgage of \$2,000.00 to George H. Mann dated March 28, 1908 to remain.</i>
Unrecorded deeds, agreements, adverse claims, and interest or secret trust known or rumored to exist.	<i>None.</i>
Is any part of the premises, privy, yard, &c., used by any neighboring or adjoining owner? If so, what?	<i>No.</i>

If the applicant, before the issuing of the policy, should have any further information or intimation as to defects, objections, liens, or incumbrances affecting the premises, the same will at once be fully made known to the Company. The Company is not responsible for unpaid gas or electric light bills.

Where the owner's title is insured, and delay or expense in obtaining actual possession of the premises is to be wholly borne by the Insured, and not by the Company.

It is further agreed and understood, that the entire charge for the services of the Company, including the Policy fee, shall be due and payable immediately upon the presentation and delivery of the Settlement Certificate.

Applicant,  
Address,

*Frederick Black,*  
*Solicitor H. B. & L. Association.*

property that has never been insured is \$26.00, which includes the examination fee of \$21 and minimum premium of \$5 for a \$2,000 policy of title insurance. The premium for additional insurance is 25 cents per hundred for each additional hundred dollars. Once a property has been insured the company will offer a reduced rate if asked to insure it again, depending on the length of time since the last insurance, which varies from \$13.50 up to \$21.00. The title companies will also make guaranteed, general and partial searches, and the charges therefor vary according to the period covered and kind of search made. Rates will be quoted by any of the title companies on application. Of course, such a search is not guaranteed by a title policy.

## 202. Settlement Certificate.

Upon receipt of the application the company makes the searches and prepares its brief of title and notes upon a paper, all of the encumbrances, liens and objections to the title. This paper is known as the settlement certificate and is sent to the applicant for the title insurance. The form of a settlement certificate is as follows:

### Settlement Certificate.

#### THE TITLE AND TRUST COMPANY.

No. 33967.

PHILADELPHIA, August 20, 1912.

Mortgage, \$1,200, secured on premises north side of X Street, 90 feet west of Y Street, 16 feet on X Street x 77 feet parallel to Y Street to three feet alley about to be made by Owen Johnson to H. B. B. & L. Ass'n, No. 314 X Street.

O. C. to Owen Johnson.

The premises are subject to the following encumbrances and claims, which will be excepted in the policy unless removed:

Ground rents.	None.
Mortgages.	\$2,000 ex. 3 yrs. 5 4-10% Owen Johnson to George H. Mann, dated March 28, 1908. Rec. March 30, 1908, W. S. V. 1332, P. 197.
Registered taxes.	None.

(Continued on next page.)

## Settlement Certificate.—(Continued.)

Current taxes.	For 1912 are not paid. Assessment \$4,500; tax, \$67.50.
Water rents.	Due for 1912.
Mechanics' and Municipal claims.	None, except possible mechanics' claims for new work done or ordered to be done and alterations.
Judgments.	None.
Objections.	<i>Title papers to be produced and parties identified.</i> <i>Subject to the terms and conditions of any unrecorded lease.</i> <i>Accuracy of description and dimensions.</i> <i>Mortgage, bond and warrant of attorney from Owen Johnson to Insured to be produced and mortgage to be recorded.</i> <i>Terms of mortgage to be written in application and made a part thereof.</i> <i>Wires attached to building.</i> <i>Company inspector reports metal awning of this premises appears to overhang adjoining premises to southeast.</i> <i>No gate into alley.</i> <i>Is this transaction within the bankruptcy or insolvency acts?</i> If any instrument in this transaction is made by or to a bank, banking institution or trust company, proof must be furnished that the notary public taking the acknowledgment is not a stockholder, director or officer in said bank, banking institution or trust company, and the notary must certify that fact in his acknowledgment.

In order to protect the insured from loss by reason of defects arising between this date and the final settlement it is recommended that the consideration money be deposited with the company, and, if the amount be sufficient the company will then pay off the encumbrances. And when the transaction is settled and the papers recorded, which recording must be done by the company, a policy of insurance for \$2000 will be issued in conformity with Application No. 33967.

From this certificate the grantee may see at a glance what the defects, if any, are in the title as well as liens and encumbrances against it. These objections, as they are termed, may then be taken up by the grantee or his agent with the grantor and arrangements made for their removal. If not

removed, these objections will appear in the policy to be issued by the company as exceptions which are not insured against. Take the form of settlement certificate on page 250, which was issued upon the application of an intending mortgagee, as an example. It discloses, first, that there are no ground rents against the property about to be mortgaged. There is, however, a mortgage existing against the property in the sum of \$2,000 for three years at five and four-tenths per cent. interest. The names of the mortgagor and mortgagee follow, together with the date and page of mortgage book in which it is recorded. Next we see there are no registered taxes. But the current taxes are not paid nor is the water rent. While no mechanic's liens are cited as having been recorded, notice is given that alterations are being made on the property which might possibly result in mechanic's lien. No judgment liens exist. Finally follows the printed stereotype objections, as well as others which are self explanatory. With this settlement certificate before him the broker can at a glance determine what serious defects or encumbrances are against the owner's title, and he sets about to either remove them or satisfy the mortgagee in some other way. If the mortgage about to be insured is to be a first mortgage then arrangements must be made to have the one disclosed by the certificate removed. The broker must ascertain if its term for three years has expired or if the mortgagee is willing to receive back his principal. If, however, the new mortgage is to be a second mortgage, then nothing need be done, since the settlement certificate only shows one mortgage against the property. The taxes and water rents can be paid at the settlement. With regard to possible mechanics' liens: If the work of alteration has been completed and paid for, the contractor's release of liens should be demanded, or if a waiver of liens has been filed this should be verified. A very usual method to pass this possible liability is for the mortgagee to demand an extra bond of indemnity. The title company will usually for an extra premium insure against this possible liability, making its own terms with the mortgagor. The objections in italics can be removed by compliance with the terms of the title company. The first presents no difficulties. The second can be removed by affidavit of the owner that no lease exists or that he occupies the premises himself. The third by furnishing an official survey, although this is a mere minor objection and can safely be allowed to

**remain.** It is usually removed by the title companies as far as the mortgagee is concerned. The remaining objections are mere notices to the mortgagee and while not of vital importance serve to show the exhaustive nature of the company's examination. All of these objections which are to be removed may be taken up in advance and are usually disposed of at the time of settlement as hereinafter set forth (See Par. 205).

### **203. Approval of Form of Instruments.**

The instruments of conveyancing, deed, mortgage or as the case may be, are submitted before execution, to the title company for its approval as to form. If in proper form they are returned marked O. K. as to form. If not, they are returned with the objections noted on the outside. They are then to be corrected according to objections. They should then be kept until ready for settlement. A deed can be executed at settlement; a mortgage should, however, be executed and returned to the company, so that it may record the mortgage two days before settlement for reasons explained heretofore (Par. 126).

### **204. Payment of Title Charges and Conveyancing Expenses.**

In Pennsylvania the expense of title searching must be paid by the purchaser, for our recording system puts him on notice of all recorded liens and encumbrances (*Woods v. Farmere*, 7 Watts 382; *Lance v. Gorman*, 136 Pa. 209). "It is not necessary to tender a whole chain of title when the vendor tenders the deed. It is the duty of the purchaser to examine the title for himself. The purchaser is not bound to accept a doubtful title, but it is his business to show that it is doubtful or positively bad (*Coulter, J., in Espy v. Anderson*, 14 Pa. 312). In some jurisdictions, *e. g.*, England, the vendor must furnish the purchaser with an abstract of title, but this is not the law in Pennsylvania (*Espy v. Anderson*, *supra*; *Whittaker v. Williams*, 7 Leg. & Ins. Rep. 14; *Negley v. Lindsay*, 67 Pa. 229). If the purchaser here wants an abstract of title he must make it himself or pay some one out of his own pocket to do it for him. But after the defects are disclosed, or any deeds, releases, etc., are found to be missing or unrecorded it is incumbent upon the vendor at his own expense to supply the lost or broken links in the chain of title (*Frowert's Estate*, 12 Phila. 148; *Negley v. Lindsay*, *supra*).

As to the payment of conveyancing costs or charges for preparing and drawing the instruments, the practice is not uniform throughout the State and depends on local custom. In Philadelphia the burden of paying these charges is also on the purchaser (*Frowert's Estate*, 12 Phila. 148; *Callaghan v. McCredy*, 48 Pa. 464). In many other counties, perhaps in most, the expense of preparing the deeds, etc., is on the vendor, a custom arising probably from the fact that if the purchaser fails to consummate his purchase it is the duty of the vendor to tender an executed deed before bringing suit (*Kester v. Rockel*, 2 W. & S. 369. But see *Tiernan v. Roland*, 15 Pa. 440; *Eberz v. Heister*, 12 Pa. Super. 388).

In the case of mortgages and assignments thereof, the rule is uniform that the borrower, or assignor of the mortgage must pay all charges, whether for title searching or conveyancing expenses, unless an express agreement is made to the contrary. The charge for making and acknowledging sheriff's deeds is to be paid by the purchaser (Act of July 11, 1901, P. L. 663, Sec. 1).

#### 205. Settlements. (Conveyance.)

You are now ready for settlement. A settlement need not necessarily be made at the company's offices, though it is better to do so and in Philadelphia usually is. Fix a time for settlement convenient to the parties and make an appointment at the title company for that hour. The settlement is conducted by an employee of that company, known as settlement clerk, and is stated according to the form here shown. Suppose the facts of the transaction are as follows:

William Simpson sold his property, 322 Logan Street, to Louis Brown, for a total consideration of \$3,000. The premises being subject to a mortgage of \$1,500 which, according to the agreement, Brown is to take under and subject to. Brown has paid \$100 down on account. The mortgage interest at 5 4-10% is due semi-annually on the first days of June and December. Taxes of 1912, which are \$42.00, appear from settlement certificate as not paid. The water rent for 1912 has been paid and amounts to \$16.00. The purchaser has borrowed from the H. B. Building and Loan Association \$500 on a second mortgage. There is a perpetual fire insurance policy of \$1,500, which the vendor agrees to sell at its cancellation value. The settlement is stated as of August 1, 1912. The following form of settlement sheet shows how this settlement would be stated:



Statement of Settlement.\*

No. 306415.

PHILADELPHIA, PA., August 1, 1912.

Settlement made by *William Simpson* with *Louis Brown*, for purchase of premises No. 322 Logan Street, Philadelphia:

<i>Dr.</i>			
Consideration, <i>subject to first mortgage</i>		\$1,500 00	
Policy No. <i>Perpetual \$30 less 10%</i>		27 00	
Policy No. \$ less %			
Taxes of current year, \$			
Water rent " \$ <i>from August 1, 1912</i>		6 67	
House rent			
Acknowledgment of deed		75	
			\$1,534 42
<i>Cr.</i>			
Paid on account		\$100 00	
Taxes of current year, \$ <i>Adjustment 7 months</i>		24 50	
Water rent " \$			
Mortgage—principal			
Interest on mortgage, <i>from June 1, 1912, to date</i>		13 50	
Accrued ground rent			
House rent			
			138 00
Balance due grantor			\$1,396 42

This company does not assume liability for payment of current or delinquent gas bills.

SETTLEMENT WITH GRANOR.		SETTLEMENT WITH GRANTOR.	
Fund due grantor in settlement	\$1,396 42	Fund due grantor or	\$1,396 42
Mort- gage {	\$.....	Title In- surance Charges {	<i>Title</i>
	\$.....		<i>charges</i> 21 00
			<i>Record- ing</i> 6 50

\*This is the printed form used by the Land Title Company; the words in italics are filled in as the terms of settlement require.

Taxes and Water Rents { .....	\$.....	Taxes and Water Rents { Taxes, 1912	42 00
.....	\$.....	.....	\$.....
.....	\$.....	Fred'k Black, solicitor	15 00
.....	\$.....	Rob't Smith, conveyancing	15 00
Robert Smith, commissions	60 00		<u>\$1,495 92</u>
Balance of settlement payable to grantor	\$1,336 42	Credit deposit by second mortgagee	500 00
		Fund necessary to complete settlement	<u>\$995 92</u>

The above settlement examined and approved, in consideration of which The Blank Title and Trust Company is directed and authorized to make distribution and payments in accordance therewith.

Approved,

*William Simpson,*  
*Grantor.*

Approved,

*Louis Brown,*  
*Grantee.*

This settlement statement it will be seen, is divided into two parts, the first part under *Dr.* represents everything charged against the purchaser, *i. e.*, everything he must pay. The other part, under the letters *Cr.*, represents everything credited to him or for which he receives an allowance. Taking up the entries in order, we find the first item is consideration. Where property is sold subject to a mortgage, the usual method of stating the consideration is to deduct the amount of mortgage and to state the net consideration, which in this case is \$1,500. This is the same as debiting the purchaser with the gross consideration of \$3,000 under the *Dr.* and crediting him with the \$1,500 mortgage he takes subject to under the *Cr.* The next item is fire insurance policy. The policy here is a perpetual one of \$1,500, the premium \$30.00 and the cancellation value 10%, *i. e.*, \$3.00 less, or \$27.00 (See Par. 45 *d*, also as to term policies). Since the purchaser must pay this cancellation value in order to get the fire policy it is charged against him under *Dr.*

The next item is taxes. Turning to our settlement certificate we would find that the taxes for 1912 have not been paid by the

grantor, and they cannot be charged against the purchaser or grantee. As to the next item, the water rent, the situation is different. This appears to have been paid for the year of 1912 by the grantor, but since he surrenders possession to the purchaser on the first of August he has had only seven months' use of the water, for which he has paid twelve months' rent. He ought, therefor, be re-imbursed by the purchaser for five months' rent. Therefore, the five months' rent of five-twelfths of \$16.00 equals \$6.67 which must be paid by the purchaser, is charged against him. House rent, if any, by custom in Philadelphia, is usually also adjusted under the same principles. This leaves acknowledgment of deed, which the purchaser pays and it is, therefore, charged against him.

Below the *Cr.* appears all items for which the purchaser or grantee receives credit. Having already paid \$100.00 on account of the purchase price the grantee is, of course, to be credited with this amount. Under the next item, taxes, he is entitled to additional credit for the seven months of the year occupied by the grantor. In other words, since the taxes for the current year are unpaid, they must be paid by the grantee, who pays them for the whole year. The grantor having, however, used and occupied the premises seven months of the year must reimburse the grantee seven month's taxes, *i. e.*, seven-twelfths of \$42.00 equal \$24.50. This he does by crediting the grantee with \$24.50. The rule, therefore, to be remembered is that where the water rent or taxes for the current year have been paid by the grantor before settlement, the grantee must be *charged* for the proportionate value of the balance of the year. Where, however, they are not paid before settlement the grantee is *credited* with the proportionate value from the beginning of the year to the settlement. In this settlement we have an illustration of each, the water rent was paid before settlement, hence the grantee was charged with five months, the balance of the year. The taxes were not paid, hence the grantee is credited with seven months' share, representing the period from the beginning of the year to date of settlement.

The next item is mortgage principal. This means the mortgage principal which the property is bought subject to. If gross consideration, to wit, \$3,000, had been set forth under the *Dr.* we would have had to credit here \$1,500; here also would be credited the amount of a purchase money mortgage had one been

given, but since no purchase money mortgage is here given and since we have only stated the net consideration, we pass this item.

Interest on mortgage is the next item. This has reference to the mortgage which the property is bought subject to. Our example has made the interest payable on this mortgage on June 1st and December 1st. The interest is always payable at the end of the six months' period. Therefore, having been paid on June 1st, 1912, for the six months ending that time, it does not become payable again until December 1st. At this date the mortgagee will collect from the grantee six months' interest from June 1st, 1912. The grantor, however, having had use of the premises from June 1st, 1912, to August 1st should pay two months' interest. This he pays to the grantee by crediting him with an amount equal to two months' interest, two-twelfths of \$81.00 equals \$13.50. The rule here is simple. Credit the grantee with an amount equivalent to interest from date of last interest payment to date of settlement.

This ends the statement of settlement of accounts between the grantor and grantee, as far as their relations with each other are concerned. By adding up the debits and deducting total of credits we find that the grantor is entitled to receive from the grantee a total of \$1,396.42.

The title company now states a settlement with the grantor and grantee separately. The settlement with grantor at the lower left hand corner is simple. The first item is fund due grantor. This item is carried over from the balance due grantor as found above, to wit, \$1,396.42. From this is deducted anything chargeable against the grantor. In this case only one thing appears, the commission due Robert Smith, the real estate broker, \$60.00, which is deducted, leaving the net balance due grantor of \$1,336.42, which amount the title company pays over to the grantor.

The settlement with grantee is in this case a little more complicated. We start with the same sum, to wit, \$1,396.42 fund due grantor which the grantee must pay the grantor. In addition to this he must pay the next item, to wit, the company's title insurance charges, \$21.00; the recording charges, \$6.50; the taxes of 1912 must also be paid, \$42.00. In addition, he must pay the conveyancing charges, here \$15.00, as well as the building association solicitor's charges, making his total expense, including everything, \$1,495.92. The \$500 borrowed on a second mortgage from the building association having already been

deposited with the company, is deducted, leaving the net amount necessary to complete settlement \$995.92, which the grantee must pay into the company. Sometimes the real estate broker agrees with the grantor to do all the conveyancing, place the mortgage and pay the title charges for a lump sum, in which case these charges are not itemized but all lumped in one amount.

In pursuance to this settlement as here stated, the title company pays out to the grantor \$1,336.42; to Robert Smith, \$75.00; to Fred Black, \$15.00; to the city, \$42.00, taxes; to the recorder of deeds, \$6.50, recording charges, and retains its own charges.

The same settlement stated below and on page 260 is a little different in form, being that used by another Title Company, which the reader will probably have no difficulty in understanding without a detailed explanation. Observe that different settlement sheets are used for the purchaser and seller.

### Another Form of a Settlement Statement.\*

#### PURCHASERS' STATEMENT.

The Title Insurance and Trust Company of Philadelphia.

Application 306415.

Premises No. 322 Logan Street.

*William Simpson to Louis Brown.*

Settlement made as follows on August 1, 1912:

Purchase Money subject to first mortgage (\$1,500)		\$1,500 00
Taxes		
Water rent from Aug. 1, 1912		6 67
Rent		
Fire insurance, \$1,500; premium, \$30, less 10%		27 00
Acknowledgment		75
Paid on account		
Taxes, adjustment	\$100 00	\$1,534 42
Water rent	24 50	
Interest on mortgage from June 1, 1912	13 50	
Rent		138 00
Net purchase money		\$1,396 42

\*In this form (Real Estate Title Co.'s form) the settlement made with the purchaser and seller are stated in separate sheets. See next page for Seller's Statement.

Taxes, 1912	\$42 00	
Water rent		
Fire insurance		
Title company charges	21 00	
Recording	6 50	
Frederick Black, solicitor	15 00	
Robt. Smith, conveyancing	15 00	99 50
Total due company by purchaser		\$1,495 92
Deposited with company by purchaser	\$995 92	
Deposited with company by mortgagee	500 00	
Total deposits		\$1,495 92

## SELLER'S STATEMENT.

The Insurance and Trust Company of Philadelphia.

Application 306415.

Premises No. 322 Logan Street.

William Simpson to Louis Brown.

Settlement made as follows on August 1, 1912:

Purchase money subject to first mortgage (\$1,500)		\$1,500 00
Taxes		
Water rent from August 1, 1912		6 67
Rent		
Fire insurance, \$1,500; premium, \$30, less 10%		27 00
Acknowledgment		75
Paid on account	\$100 00	\$1,534 42
Taxes, adjustment	24 50	
Water rent penalty		
Interest on mortgage from June 1, 1912	13 50	
Rent		138 00
Net purchase money deposited with company		\$1,396 42
Paid out as follows:		
Mortgage and sat. fee, No. Page		
Interest to @ %		
Robert Smith, commissions, 2%	\$60 00	



Fire insurance, 10 years	6 60		
Mechanics } Claim, C. P., No.      Term, Municipal }      No.      (      )			
H. B. Building and Loan Association, back dues, etc.	13 50		
William Blank, solicitor, conveyancing, etc.	25 00		
Title company charges	21 00		
Recording	4 00	153 60	
Balance due mortgagor		\$1,046 40	

Settled as above in consideration of which  
The Title and Trust Company is directed and authorized to make  
payment of the claims and charges above set forth, all of which  
are hereby approved.

### Another Form of Mortgage Settlement.

#### MORTGAGE SETTLEMENT.

The Title Insurance and Trust Company of Philadelphia.

Mortgage, \$2,000.

Application No. 312181.

William Flanagan to Otto Schmidt.

Premises No. 3316 "A" Street. Settled Sept. 1, 1912.

Deposited with company by mortgagee

		\$2,000 00
Total deposited		\$2,000 00
Paid out as follows:		
Mortgage and sat. fee	\$1,200 50	
Interest, June 1, 1912, to Sept. 1, 1912, 5 4-10%	16 20	
Second mortgage and sat. fee		
Interest to		
%		
Taxes	60 00	
Water rent	16 00	
Fire insurance, \$2,000; prem., \$6	6 00	



<i>Judgment, C. P. 4, March Term, 1911,</i>			
<i>No. 321, to satisfy</i>	101	50	.
Title company charges	21	00	
Recording	3	75	
<i>A. A. Turner, commissions and con-</i>			
<i>vey.</i>	35	00	
Held			1,459 95
Balance due mortgagor			<u>\$539 05</u>

### 207. Suggestions in Making Settlements.

(1) In ordering title insurance always take the old deed of the property about to be conveyed with you to the application clerk in order that he may get the description accurately.

(2) If a mortgage is to be taken out by the purchaser at the same time that he gets title, order the title insurance in the name of the mortgagee. The policy will issue to him and the company will issue to the owner an owner's certificate which will give the owner a right to the new policy in his own name upon surrender of the mortgagee's policy when the mortgage is paid off.

(3) Before you fix a time for settlement make a list of the objections appearing on the settlement certificate which you insist on having removed. Communicate with the grantor or his representative and ascertain his ability to have them removed.

(4) Always have the grantor bring to the settlement his current tax and water rent receipts, if they have been paid, in order that they may be removed from the settlement certificate should they appear as unpaid thereon.

(5) Where the grantee takes subject to a mortgage see that the grantor produces the interest receipt of the last interest payment.

(6) Always have grantee bring either cash or certified check in order that there be no delay in paying out the funds.

(7) If representing a mortgagee or grantee and you cannot attend settlement deposit the money with the title company, together with a letter of instruction setting forth in detail what objections you insist on having removed and such other conditions as you desire to impose. The parties to the transaction,

especially the grantor, ought always be present as well as properly identified so that possible imposition may be avoided.

(8) See that the deed or other instrument is properly executed and dated. An assignment of mortgage requires two subscribing witnesses.

(9) Outside of Philadelphia, where the local custom is otherwise and unless the agreement of sale provides otherwise, taxes levied prior to the sale are not apportioned, but are an encumbrance which the grantor is obliged to remove (See Par. 50, Suggestion 3). Rent likewise paid in advance belongs to grantor before settlement, except in Philadelphia by custom and except where the agreement of sale provides that it should be apportioned to the day of settlement (Par. 50, Suggestion 3).

(10) If the fire insurance policy is to be assigned, see that it is sent to the insurance company immediately after settlement, so that the transfer to the new owner may be approved by the company without delay. If it is to be assigned to a mortgagee don't forget to order a mortgagee clause to be attached.

(11) If the house is occupied by the owner, see that the keys are turned over at settlement. If not occupied by owner, see that the lease of tenant is assigned. Demand either a lease of the tenant or possession for a tenant without a lease is a prolific source of trouble and litigation.

(12) Where a mortgage encumbrance is to be paid off at settlement be sure to notify the mortgagee to send or have at the settlement an itemized statement of the principal and accrued interest which he demands to satisfy the mortgage. This will save much delay and a possible postponement of the settlement.

(13) In arranging for a mortgage settlement where only a mortgage is made and title is *not* to pass, have the mortgage properly executed and in the possession of the title company at least two days before settlement, so that it may be recorded and the search brought down to the day of settlement, to disclose any liens that may have crept in just before or at the time the mortgage is recorded (See Par. 126).

If settlement is not made through a title company, the conveyancer should take the same precaution. When, however, the mortgage is made at the same time that title passes this need not be done.

(14) When taking title to property from a guardian, trustee, administrator or executor selling by direction of the orphans' court, see that a certified copy of the decree authorizing the sale is produced and that security has been properly entered in accordance with the terms of the decree.

## CHAPTER XV.

### FORMS.

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## 208. Acknowledgment by Individual (Usual Form).

STATE OF PENNSYLVANIA,     }  
COUNTY OF PHILADELPHIA,   } ss:

On the First day of February, A. D. 1910, before me, the Subscriber, a Notary Public of the Commonwealth of Pennsylvania, residing in said County, personally appeared the above named HARRY WILLIAMS who in due form of law acknowledged the above Indenture (or letter of attorney, release, assignment, &c., whatever the instrument may be) to be this act and deed, to the end that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

WILLIAM BLENN, (Seal.)

Commission expires, etc.

Notary Public.

**209. Acknowledgment by an Executor, Administrator, or Trustee.**

PHILADELPHIA COUNTY, ss:

On the Fifth day of June, A. D. one thousand nine hundred and three before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally came the above-named James Brown, Executor of the last Will and Testament of Rebecca Smith, (or Administrator of the Estate of Rebecca Smith, or Trustee of the estate of Rebecca Smith, as the case may be,) who in due form of law acknowledged the above Indenture to be his act and deed as such executor, (or administrator, or trustee,) to the end that the same might be recorded as such, according to law.

WITNESS my hand and seal, the day and year aforesaid.

JAMES BLACK, (Seal.)  
*Notary Public.*

**210. Acknowledgment by Virtue of a Letter or Power of Attorney.**

PHILADELPHIA COUNTY, ss:

On the First day of March, A. D. One Thousand nine hundred and ten, before me, the Subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally came the above named JOHN JACOBS, and in his own name and in the names of his constituents, the above named JOHN BROWN and JOSEPH BROWN, in due form of law acknowledged the above-written indenture to be his own act and deed, and the act and deed of his constituents, the said JOHN BROWN and JOSEPH BROWN, by him, the said JOHN JACOBS, done and executed by virtue of a letter of attorney to him for that purpose granted; to the end that the same might as such be recorded.

WITNESS my hand and notarial seal, the day and year aforesaid.

EDWARD HENRY, (Seal.)  
*Notary Public.*

**211. Form of Corporation Acknowledgment.**

CITY AND COUNTY OF PHILADELPHIA, ss:

On the Sixteenth day of August, A. D. 1910, before me, the Subscriber, a Notary Public in and for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared J. B. B., Secretary of the O. L. B. & L. A., who being duly sworn according to law, says that he was personally present at the execution of the above Release of Mortgage, and saw the

Common Seal or Corporate Seal of the said Corporation duly affixed thereto; that the seal was affixed thereto as the Common and Corporate Seal of the said Corporation; and that the said Release of Mortgage was duly sealed and delivered by J. A. F., President of the said Corporation as and for the act and deed of the said Corporation, for the uses and purposes therein mentioned, and that the name of this Deponent as Secretary and of J. A. F., as President of the said Corporation, subscribed to the above Release of Mortgage in attestation of its due execution and delivery, are of their and each of their respective handwritings.

SWORN AND SUBSCRIBED BEFORE me this	}	J. B. M.
Sixteenth day of August, A. D. 1910.		
(Seal.) L. P. S.,		
<i>Notary Public.</i>		

Commission Expires Feb. 13, 1911.

**212. Affidavit, (General Form).**

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss:

Before me the Subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared THEODORE BLACK, who being duly sworn according to law, deposes and says (here set out the nature of the facts desired to be sworn to).

FURTHER DEPONENT SAYS NOT.

SWORN AND SUBSCRIBED TO BEFORE	}	THEODORE BLACK.
me this Tenth day of February, A. D.		
1902.		

WILLIAM LONG,  
*Notary Public.*

Commission expires, etc.

**213. Affidavit of Probate of Deed Not Acknowledged.**

BUCKS COUNTY, ss:

Be it remembered, that on the First day of January, A. D. one thousand nine hundred and eight, before me, the subscriber, one of the Justices of the Peace in and for the said county, personally came JOHN JONES, of Doylestown, in said county, farmer, one of the subscribing witnesses to the execution of the above indenture,



and being duly sworn (or affirmed) upon his oath (or affirmation) according to law, doth depose and say, that he did see EDWARD BLACK, the grantor above named, sign and seal, and as his act and deed, deliver the above indenture, deed, or conveyance, for the use and purposes therein mentioned; and that he did also see WILLIAM DOYLE subscribe his name thereunto as the other witness of such sealing and delivery, and that the name of this deponent thereunto set and subscribed as a witness, is of this deponent's own proper handwriting.

JOHN JONES.

Sworn (or affirmed, as the case may be) and subscribed the day and year aforesaid before me. Witness my hand and seal.

HARRY BROWN, (Seal.)

*Justice of the Peace.*

**214. Affidavit of Probate of a Deed Not Acknowledged Where a Witness is Deceased or Absent.**

WASHINGTON COUNTY, ss:

Be it remembered, that on the Sixth day of July, A. D. one thousand nine hundred and two, before me, the subscriber, one of the Justices of the Peace in and for said county, personally appeared RICHARD GREEN, of full age, who being duly sworn, according to law, doth depose and say, that he is well acquainted with the handwriting of FREDERICK KING, one of the subscribing witnesses to the within \_\_\_\_\_, having frequently seen him write, and that he verily believes that the name of the said FREDERICK KING, signed to the same as one of the attesting witnesses, is the proper handwriting of the said FREDERICK KING, who is now deceased (or, who is now absent, and whose whereabouts is unknown, or as the case may be).

RICHARD GREEN.

SWORN AND SUBSCRIBED before me, the day and year aforesaid.

JOHN YOUNG,

*Justice of the Peace.*

**215. Affidavit to Remove Objections From Settlement Certificate.**

COUNTY OF PHILADELPHIA, }  
STATE OF PENNSYLVANIA, } ss:

On the First day of April A. D. 1908 before me the Subscriber a Notary Public for the Commonwealth of Pennsylvania, resid-

ing in the City of Philadelphia, personally appeared EMMA C. MORRIS, who, being duly sworn according to law, did depose and say that she is the owner of the premises No. 1132 So. E Street, Philadelphia, and that there have been no alterations, additions or repairs made to said premises, that no sewers, drains or pipes have been laid, that no paving, curbing or other work has been done in or upon the streets, alleys or public passage ways bounding, adjoining or laid out and opened for the use of the premises in question, within six months last past except such as have been fully paid.

And further that she is not the Emma Morris against whom a certain judgment of Three Hundred (\$300.00) Dollars appears of record as of C. P. No. 1, March Term, 1907, No. 331, and that she makes this affidavit for the purpose of inducing the Title & Trust Company of Philadelphia, Pa., to remove the objections noted on the settlement certificate and to issue its Policy No. 31245 insuring the title of premises No. 1132 So. E Street.

Sworn and subscribed to before me  
the day and year aforesaid.

ROBERT ROE,

*Notary Public.*

} EMMA C. MORRIS.

Commission Expires February 1, 1911.

## 216. Agreement of Sale of Real Estate.

See form, Paragraph 44, page 52.

## 217. Agreement of Sale by a Builder.

THIS AGREEMENT, Made the first day of November, A. D. 1912 Between Oscar K. Andrews, of Philadelphia, Builder, of the first part, and Herman S. Schmidt, also of said city.

WITNESSETH, That the said party of the First Part, for the consideration hereinafter mentioned, doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with the said party of the Second Part, his heirs and assigns, that he, the said party of the First Part, shall and will, on or before the First day of December next (1912), at the proper costs and charges of the said party of the Second Part, his heirs and assigns, by a good and sufficient deed of conveyance, grant, convey and assure, unto the said party of the Second Part, his heirs and assigns, *All that certain* lot or piece of ground, with the 2 story brick messuage or tenement thereon erected, situate on

the South side of C Street, (No. 4221) at a distance of 32 feet West Ward from the West side of F Street, in the 50 Ward of the City of Philadelphia. Containing in front on said C Street 16 feet and in depth 95 feet. And the said party of the Second Part, for himself, his heirs, executors, and administrators, doth hereby covenant, promise and agree, with the said party of the First Part, his heirs and assigns, that he, the said party of the Second Part, shall and will well and truly pay unto the said party of the First Part, his heirs and assigns, the sum of Four thousand (\$4,000) Dollars, as follows, viz.: One hundred (\$100) Dollars, part thereof upon the execution of this Agreement, the receipt whereof is hereby acknowledged; Fourteen Hundred (\$1400) Dollars, other part thereof in cash at the time of settlement, which is to be made on or before the said First day of December next (1912); Two Thousand (\$2,000) Dollars, other part thereof to be secured thereon by a purchase money Bond and Mortgage drawn in the latest form, to contain Attorney's fee and tax receipt clauses, payable at the expiration of 3 years with interest at the rate of five and four-tenths per cent. per annum.

The remaining part thereof to be secured thereon by a Bond and Mortgage, drawn in the latest form, to contain the Attorney's fee and tax receipt clauses, payable in monthly instalments, of not less than Fifty (\$50) Dollars per month, so that the whole amount shall be paid within ten months with interest payable monthly, the rate of six per cent. per annum.

Under and subject nevertheless to the express condition and restriction that no building hereafter erected on said above described lot shall approach nearer than 10 feet to the south building line on said C street, and that any building erected thereon shall not be sold to, or used or occupied by any other person than one of the Caucasian descent only during a period of ten years from the date of the deed to the purchaser under this agreement.

It is also further agreed by the parties hereunto mentioned that time shall be considered as the essence of this agreement, and that the sum of One Hundred Dollars paid at the execution hereof is to be considered as liquidated damages and forfeited by the party of the Second Part to the party of the First Part, in the event of the failure of the party of the Second Part to make settlement at the time above set forth.

The said premises are to be conveyed clear of all encumbrance, except as above mentioned. Possession is to be given at the time

of settlement. All perpetual policies of Fire Insurance to be paid for at withdrawal value and term policies at proportionate value for unexpired term. Taxes, Water Rent, Interest on encumbrances (if any) Rents, &c., to be apportioned at date of settlement. The title is to be good and marketable and such as will be insured by the Blank Title and Trust Company. If for any reason a good and marketable title such as will be insured as aforesaid cannot be made this agreement shall be void and the sum paid on account as above provided shall be returned by the party of the First Part to the party of the Second Part in lieu of all claims for damages or otherwise. All communications between the parties hereto, either verbal or written, with reference to the subject matter of this Agreement are hereby abrogated; and this Agreement duly accepted and approved, constitutes the sole Agreement between the parties hereto, or upon either of them. The said party of the Second Part hereby agrees to accept the bond of the said party of the First Part in the whole amount of said purchase-money to indemnify him against mechanics' liens.

IN WITNESS WHEREOF, The said parties to these presents have hereunto set their hands and seals, the day and year first above written.

SEALED AND DELIVERED	}	
in presence of		OSCAR K. ANDREWS. (Seal.)
WILLIAM C. THOMPSON,		HERMAN S. SCHMIDT. (Seal.)
ROBT. E. RUDOLPH.		

## 218. Agreement of Exchange of Real Estate.

THIS AGREEMENT, Made the Seventh day of February, A. D. One Thousand Nine Hundred and Eleven (1911) BETWEEN Jacob Reynolds of the City of Philadelphia of the first part, and Isaac Simpson also of said City of the second part.

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Dollar, in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and also in consideration of the conveyance of the property hereinafter mentioned and agreed to be conveyed by the party of the second part, Doth hereby agree to grant and convey unto the said party of the second part, ALL THAT CERTAIN MESSAGE OR TENEMENT SITUATE on the East side of Fairmount Avenue, between 2d Street and 3d Street, Numbered and known as 221 Fairmount Avenue, in the 11th Ward, of the City of Philadelphia.

AND the said party of the second part, for and in consideration of the sum of One Dollar, in hand paid by the party of the first part, the receipt whereof is hereby acknowledged, and also in consideration of the conveyance of the property hereinbefore mentioned and agreed to be conveyed by the said party of the first part, Doth hereby agree to grant and convey unto the said party of the first part, ALL THAT CERTAIN MESSUAGE OR TENEMENT SITUATE on the West side of 52nd Street, between Chester Ave. and Springfield Ave., Numbered and known as 1536 So. 52nd Street, in the 40th Ward, of the City of Philadelphia.

AND the said parties hereby mutually agree to make and deliver, each to the other, or to their assigns, and at their own proper cost and charges, a good and sufficient deed or deeds for the conveying and assuring, each to the other, in fee simple, a good marketable title of the property of each as hereinbefore described and mentioned, free and clear of all encumbrance, (except as hereinafter noted). Taxes, water rent and interest on encumbrance, to be apportioned to date of settlement.

The property number 221 Fairmount Ave., now owned by the said party of the first part, is to be conveyed subject to a Mortgage of Twenty-two hundred (\$2200.00) dollars.

AND the property number 1536 So. 52nd Street, now owned by the said party of the second part, is to be conveyed subject to a first mortgage of Three thousand and Five hundred (\$3,500.00) dollars, and a second mortgage of Eight hundred (\$800.00) dollars.

AND for the true and faithful performance of each and every of the covenants and agreements above mentioned, the parties to these presents binds themselves, each to the other, in the penal sum of Fifty Dollars, to be paid by the defaulting party as liquidated damages.

It is further agreed that this agreement shall apply to and bind the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Sealed and delivered	}		
in the presence of us		JACOB REYNOLDS.	(Seal.)
JOHN H. ROYER,		ISAAC SIMPSON.	(Seal.)
JAMES REARDON.			

**219. Agreement to Extend Mortgage.\***

THIS AGREEMENT, made this twenty-first day of March in the year One Thousand Nine Hundred seven (1907) BETWEEN SAMUEL BLACK of the City of Philadelphia of the first part, and WILLIAM BROWN, also of the City of Philadelphia, of the second part.

WHEREAS, The party of the first part is the present holder of a certain bond to secure the sum of Eighteen Hundred (\$1800.00) Dollars given by HENRY SMITH to THEODORE THOMAS, dated the First day of September A. D. 1902, now overdue, which is secured by a mortgage bearing like date, of certain premises therein described, recorded in the County of Philadelphia and State of Pennsylvania in Mortgage Book W. S. V. No. 149, Page 557, &c. and assigned to the said SAMUEL BLACK by Assignment of Mortgage dated November 30, 1904 and recorded in Assignment of Mortgage Book No. 142, Page 100 &c.

AND WHEREAS, The party of the second part the owner of the premises so mortgaged, and has requested the party of the first part to extend the said loan as hereinafter mentioned, which the said party of the first part has consented to do upon the agreement of the said party of the second part to do what is hereinafter specified.

NOW THIS AGREEMENT WITNESSETH, That it is agreed by and between the parties hereto, in consideration of the premises and of mutual promises, as follows:

1. The interest to be paid on said bond, from and after the thirtieth day of May 1907, until the expiration of the term next hereinafter specified, shall be at the rate of five and four-tenths per centum per annum.

2. The principal of said bond will not be paid, or tendered to be paid, by the obligor or owner of the mortgaged premises, for the term of three years from the thirtieth day of May in the year of our Lord One Thousand Nine Hundred seven (1907).

3. The party of the first part will not demand payment of the principal of said bond during said extended term, provided the interest be paid semi-annually within thirty days after the same

\*This agreement to extend mortgage need not be acknowledged unless it is intended to record it, in which case add acknowledgment similar to form shown on page 268. It is recommended that such agreements should be recorded.

shall have become due and payable, and receipts for all taxes and water rents assessed and to be assessed on the mortgaged premises shall have been presented to him on or before the First day of September of each and every year, and the buildings thereon be kept insured against loss or damage by fire for the benefit of the holder of the said bond and mortgage in the sum of Eighteen Hundred (\$1800.00) Dollars, and all other provisions contained in said bond and mortgage be complied with in all respects by the said party of the second part.

4. The party of the second part hereby guarantees, assumes, and covenants to make prompt payment of the interest and principal of said bond so secured, together with all taxes and water rents assessed, and to maintain the fire insurance, as aforesaid.

5. All the terms, conditions, stipulations, and provisions contained in said bond and mortgage not inconsistent herewith are to remain in full force and effect.

6. This Agreement is to extend to and bind the respective heirs, executors, administrators, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year aforesaid.

WITNESS:

ROBERT ROE,

JOHN DOE.

} WILLIAM BROWN. (Seal.)  
 } SAMUEL BLACK. (Seal.)

*Notary Public.*

Commission expires February 1, 1911.

## 220. Assignment or Extinguishment of Ground Rent.

See Form, paragraph 116, page 153. Note the same form can be used for both assignment and extinguishment of ground rents. If the instrument is made to a third person it operates merely as an assignment. If made to the holder of the fee it operates to extinguish it (see paragraph 116-117 on merger).

## 221. Assignment of Lease.

FOR VALUE RECEIVED, I hereby assign, transfer, and set over to WILLIAM JONES, his heirs, executors, administrators and assigns all my right, title and interest in the within Lease and all benefit and advantage to be derived therefrom.

WITNESS my hand and seal this 13th day of May, A. D. 1909.

Signed, Sealed and Delivered in the presence of JOHN DOE, ROBERT ROE.	}	ALLEN SMITH.      (Seal.)
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This assignment is usually indorsed directly upon the lease assigned.

**222. Assignment of Right to a Purchase Money Mortgage.**

WHEREAS, I, WILLIAM STONE, have this day sold and conveyed unto ISAAC LONG, his heirs and assigns, all that certain lot, &c., for the sum of \$1,000.00 of which \$500.00 has been advanced by said CHARLES DOLAN, now in consideration of the premises, and of the sum of \$1.00 to me in hand paid by the said CHARLES DOLAN, the receipt whereof is hereby acknowledged, I hereby assign and transfer unto the said CHARLES DOLAN, his heirs, executors, administrators, and assigns, my right to a purchase-money mortgage for the amount advanced by him.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this       day of       , A. D. 19   .

Witness: ALBERT S. RAMBLER, O. P. SANDERS.	}	WILLIAM STONE.      (Seal.)
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**223. Assignment of Mortgage.**

See form, paragraph 101, page 136.

**224. Certificate of No Set-Off.**

See paragraph 103, page 138.

**225. Declaration of Trust.**

TO ALL WHOM THESE PRESENTS SHALL COME, I, E. A. B., of the City of Philadelphia, send Greeting:

WHEREAS O. J. E. and K. M. E. of the City of Philadelphia, by deed bearing date the First day of March, A. D. 1910, and recorded in the office for Recording of Deeds in and for the County of Philadelphia in Deed Book W. S. V. No. 1123, Page 321 &c. have, for and in consideration of the sum of Forty-five Hundred (\$4500) Dollars granted and conveyed to me in fee simple with full covenants and general warranties ALL THAT CERTAIN lot or piece of Ground with the buildings and improvements



thereon erected SITUATE on the Northwest Corner of F Street and L Street in the Fiftieth Ward of the City of Philadelphia, CONTAINING in front or breadth on said L Street sixteen feet, and extending of that width in length or depth between lines parallel with F Street along the West side of F Street One Hundred feet to a certain four feet wide alley running Northwestwardly and Southeastwardly parallel with said L Street, known and described as the Northwest Corner of F and L Street, as by reference to said Deed will more fully appear :

AND WHEREAS, I have received by said delivery and transfer, the said property for the benefit of J. P. P., his heirs, executors, administrators and assigns.

Now KNOW YE that I, the said E. A. B. do by these presents make known, admit and declare that the said premises were so conveyed to me subject to the mortgages thereon existing at the time of the transfer, and that I now hold and will continue to hold the same in trust only for the use and benefit of J. P. P. his heirs, Executors, Administrators and Assigns, and that I have no beneficial interest therein except by what may arise by legal and equitable implications, and I do for myself, my Heirs, Executors and Administrators covenant and agree to and with the said J. P. P. his heirs, Executors, Administrators and Assigns, that I and my Heirs shall and will convey the said premises by good and sufficient deed to the said J. P. P. his heirs, executors, administrators and assigns, as they may direct and require, whenever requested so to do, subject only to such encumbrances as may now be charged against said property.

AND I DO FURTHER for myself, my Heirs, Executors and Administrators covenant and agree to and with the said J. P. P. his Heirs, Executors, Administrators and Assigns, that I or my Heirs shall not do or knowingly suffer, or permit any act, deed, matter or thing whereby the said premises can, shall or may be in any wise impaired, injured, encumbered in title, interest, charge or estate, otherwise howsoever.

IN WITNESS WHEREOF I have hereunto set my hand and seal this first day of April in the year of our Lord One Thousand Nine Hundred and Ten (1910).

Signed, Sealed and delivered  
in the presence of us  
W. F. L.,  
O. J. M.

E. A. B. (Seal.)

CITY AND COUNTY OF PHILADELPHIA, ss:

On the first day of April A. D. 1910, did, before me the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appear the above named E. A. B. who in due form of law acknowledged the above Indenture to be his act and deed, and that the same might be recorded as such.

WITNESS my hand and Notarial seal the day and year aforesaid.

W. F. L.,

*Notary Public.*

Unless this declaration of trust is recorded it would not avail against the creditors of E. A. B.

**226. Deed in Fee by Individual (Usual Form).**

See form, paragraph 53, page 64.

**227. Deed in Fee. (Short Form Under Act of 1909.)**

See paragraph 57, page 76.

**228. Form of Deed by Corporation.**

See Deed form Par. 53, page 64. Deeds both by and to Corporations are similar in form to the ordinary deed form of individuals except that after the name of the corporation is put the words "Its successors and assigns" instead of "heirs" as in the case of individuals. Also where conveyance is made by a corporation take care to add the Corporation form of acknowledgment, as set forth in form Par. 211.

**229. Deed to Husband and Wife as Tenants by Entirety.**

The deed form used to convey property to husband and wife as Tenants by Entirety is the same as the ordinary deed form shown in Par. 53 on page , except that after the operative words or granting clause (see paragraph 54, d) and immediately before the description are inserted the words "As Tenants by Entireties"\* so that the clause would read as follows:

\*It is customary to insert the words "As tenants by entireties," although it has been decided that a husband and wife cannot hold title jointly in any other way (See Par. 5d, ante). Nevertheless all the title companies in Philadelphia still require the insertion of said words before approving the deed, possibly because of a doubt expressed by the Supreme Court in the case of *Merritt v. Whitlock*, 200 Pa. 50. It is submitted that this doubt has been removed by the case of *Hoover v. Potter*, 42 Pa. Super. 21, cited with approval though not on this exact point in *Rhodes' Estate*, 232 Pa. 492.

“Do grant, bargain and sell, release and confirm unto the said Grantees their heirs and assigns *As Tenants by Entireties*, All That Certain, &c.,”

In the habendum, that is the To Have and To Hold clause, (See Par. 55 a) insert the words, “*As Tenants by Entireties*” immediately after the habendum so that the habendum will read:

“To have and To Hold said lot or piece of ground above described with the buildings and improvements thereon erected, hereditaments and premises hereby granted or mentioned and intended so to be with the appurtenances unto the said Grantees, their heirs and assigns to and for the only proper use and behoof of the said Grantees their heirs and assigns forever *As Tenants by Entireties*.”

### 230. Deed by Attorney In Fact.

THIS INDENTURE made the Twenty-first day of November, in the year of our Lord One thousand nine hundred and eight, between JOHN JONES, of the City of Philadelphia, and AGNES his wife, of the first part, by JOHN JACOBS, their attorney in fact, specially constituted by power of attorney bearing date the Second day of September, A. D. 1908, and recorded in the office for recording of deeds in and for the County of Philadelphia, in Letter of Attorney book W. S. V., No. 272, page 341, as by reference thereunto being had, appears, and HENRY BROWN of the City and County of Philadelphia, State of Pennsylvania, of the second part; WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States, to him in hand paid by the said party of the second part, at and before the ensembling and delivery of these presents, the receipt and payment whereof he doth hereby acknowledge, hath granted, bargained, sold, released, and confirmed and by these presents doth grant, bargain, sell, release, and confirm, unto the said party of the second part, and to his heirs and assigns, all that messuage, &c., (here set out the description of the property, after which may be set out the recital). Together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereto belonging, and the reversions and remainders, rents, issues, and profits thereof; and also all the estate and interest whatsoever of him, the said party of the first part, in law

or equity, of, in, to, or out of the same. To have and to hold the premises hereby granted, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the use of the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he, the said party of the first part, and his heirs, the above-mentioned and described premises, with the appurtenances, unto the said party of the second part, against the said party of the first part, and his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim, "by, from, or under him, them or any of them," shall and will warrant and forever defend by these presents.

IN WITNESS WHEREOF the said party of the first part, by JOHN JACOBS their attorney in fact, have hereunto set their hands and seals, the day and year first above written.

Signed, Sealed and Delivered	}	JOHN JONES.	(Seal.)
in the presence of		AGNES JONES.	(Seal.)
WM. F. BELSTERLING,		By their Attorney,	
ANDREW SMITH.		JOHN JACOBS.	(Seal.)

PHILADELPHIA COUNTY, ss:

On the 21st day of November, A. D. 1908, before me the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally came the above named JOHN JACOBS and in his own name and the name of his constituents the above named JOHN JONES and AGNES JONES in due form of law acknowledged the above written indenture to be his own act and deed and the act and deed of his Constituents, the said JOHN JONES and AGNES JONES done and executed by virtue of a letter of attorney to him for that purpose granted; to the end that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

WILLIAM F. BELSTERLING,

(Seal.)

*Notary Public.*

Commission expires, &c.

**231. Executors'\* Deed Where Authority to Sell is Given in a Will.**

THIS INDENTURE made the Fifteenth day of January, in the year of our Lord one thousand nine hundred and nine, between ADAM BROWN and ANDREW BLACK, of the City of Philadelphia, Executors of the last will and testament of JOHN JONES, late of Philadelphia, of the one part, and GEORGE SMITH, of Philadelphia, of the other part: WHEREAS the said JOHN JONES, by virtue of divers good conveyances and assurances in law, duly had and executed, became in his lifetime seized in his demesne, as of fee, amongst other lands, of and in a certain messuage or tenement and tract of land, situate in the City of Philadelphia, County of Philadelphia aforesaid, containing Two hundred acres, be the same more or less; and being so thereof seised, made his last will and testament in writing, bearing date the Twenty-third day of June, A. D. One thousand nine hundred and ten, wherein and whereby, amongst other things, he ordered that the whole of his real estate should be sold by his Executors thereafter named, of which said will he appointed ADAM BROWN and ANDREW BLACK Executors, as in and by the said recited will, since his decease duly proved, and remaining in the Register's office at Philadelphia, recourse being thereunto had, appears: Now this indenture witnesseth, that the said ADAM BROWN and ANDREW BLACK, Executors as aforesaid, for and in consideration of the sum of One Dollar, to them in hand paid by the said GEORGE SMITH at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, and confirmed, and by these presents, by force and virtue of the said last recited will, do grant, bargain, sell, alien, release, and confirm, unto the said GEORGE SMITH all that above-mentioned and described messuage, &c., bounded and described as follows: beginning, &c. (here describe the premises.) Together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging or any wise appertaining, and the reversions and remainders,

\*Neither an executor nor an administrator, unless the authority is given either by the will, or by the orphans' court where the personal estate is insufficient to pay debts, has any power to sell or interfere with a decedent's real estate. In drawing an executor's deed, first ascertain the source of his power and recite it in the deed. For form of deed of executor empowered by the orphans' court to sell real estate for payment of debts, consult administrator's form, Par. 232.

Covenant in brackets may be omitted.

rents, issues, and profits thereof; and also all the estate, right, title, interest, property, claim, and demand whatsoever of the said JOHN JONES at and immediately before the time of his decease, in law or equity, or otherwise howsoever, of, in, to, or out of the same. To have and to hold the said messuage or tenement and tract of Two hundred acres of land, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said GEORGE SMITH, his heirs and assigns, to the only proper use and behoof of the said GEORGE SMITH, his heirs and assigns, forever. (And the said Adam Brown and Andrew Black, Executors aforesaid for themselves, their heirs, executors, and administrators, do severally, and not jointly, nor the one for the other, or for the act or deed of the other, but each for his own acts only, covenant, promise, and agree to and with the said GEORGE SMITH his heirs and assigns, by these presents, that they, the said ADAM BROWN and ANDREW BLACK, have not heretofore done or committed any act, matter, or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, are, or shall or may be impeached, charged, or encumbered in title, charge, estate, or otherwise howsoever.)

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered	}	
in the presence of		
CLEMENT HERMAN,		ADAM BROWN. (Seal.)
RUDOLPH HAAS.		ANDREW BLACK. (Seal.)

NORTHUMBERLAND COUNTY, ss:

On the Fifteenth day of January A. D. 1909, before me the subscriber, one of the Justices of the Peace in and for the said County, personally appeared the above named ADAM BROWN and ANDREW BLACK, Executors under the last will and testament of JOHN JONES, and in due form of law acknowledged the foregoing to be their and each of their respective act and deed as such Executors to the intent that the same might be recorded as such.

WITNESS my hand and seal the day and year aforesald.

(Seal.)

CLEMENT HERMAN,  
*Justice of Peace.*

**232. Deed by Administrator or Executor\* Where Land is Sold at Public Sale by Order of Orphans' Court for Payment of Debts.**

THIS INDENTURE, made the Fifth day of July, in the year of our Lord on thousand nine hundred and three, between JOHN BURNS, and WILLIAM JONES, Administrators of all and singular the goods, and chattels, rights and credits which were of WILLIAM DOE, late of Philadelphia, merchant, who died intestate, of the one part, and JOHN JAMES, of Philadelphia, of the other part: Whereas the said WILLIAM DOE, in his lifetime and at the time of his death, was seized in his demesne, as of fee, of and in a certain tract (or tracts, as the case may be) of land, situated in Philadelphia, containing three acres: And whereas, letters of administration of all and singular the goods and chattels, rights and credits which were of the said WILLIAM DOE at the time of his death, were afterwards, in due form of law, committed to the aforesaid JOHN BURNS and WILLIAM JONES: And whereas, by the petition of the JOHN BURNS and WILLIAM JONES, to the Judges of the Orphans' Court, held in and for the County of Philadelphia, at Philadelphia; the first day of November A. D. 1903, setting forth that the personal estate of the said WILLIAM DOE was not sufficient to pay his just debts, a schedule of which, together with an inventory of the said debts, and also a statement of all the real estate of said decedent, was thereto attached and praying said Court to allow them to make sale of so much of the said lands as the said Court should judge necessary for the purpose aforesaid; and thereupon it was considered and ordered by the said Court, that the lands hereafter described should be sold according to the prayer of the petitioners: And whereas, in pursuance of the said order, and by force and virtue of the laws of the Commonwealth of Pennsylvania in such case made and provided, afterwards, to wit, on the third day of December, A. D. 1903, at Philadelphia, the said JOHN BURNS and WILLIAM JONES

\*Until bond has been entered by the administrator or executor, selling under direction of the orphans' court, his deed is ineffectual to pass title, hence at the settlement demand the production of a certificate from the clerk of the orphans' court that bond has been entered in conformity to the decree of the court. It is good practice to record this certificate with the deed, though often this is not done. The best practice, however, is to have the clerk of the orphans' court certify on the deed both to decree authorizing the sale and to the entry of the bond. See end of deed, form Par. 234, page 293. In this way all of the advantages of recording this certificate are obtained, while the cost of recording it as a separate instrument is saved.

did expose to sale at public vendue the hereinafter described land, with the appurtenances, after having duly advertised the same according to law, and then and there did sell the same to the said John James, for the sum of Ten thousand Dollars, he being the highest bidder, and that the highest and best price bid for the same; which sale, on report thereof made to the said Judges, was, on the Sixth day of January, A. D. 1904, confirmed by the said Court, and it was considered and adjudged by the said Court that the same should be and remain firm and stable forever, as by the records and proceedings of the said Court, reference being thereunto had, will more fully and at large appear: Now this indenture witnesseth, that the said JOHN BURNS and WILLIAM JONES for and in consideration of the said sum of Ten Thousand Dollars, to them in hand paid by the said JOHN JAMES, at and before the ensealing and delivery hereof, the receipt whereof they do hereby acknowledge, have granted, bargained, sold, released, and confirmed and by these presents, in pursuance and by virtue of the said order of court, do grant, bargain, sell, release, and confirm unto the said John James, and to his heirs and assigns, all that the said messuage, &c., bounded and described as follows: Beginning, &c. (Here describe the premises.) Together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof: And also all the estate, right, title, interest, property, claim, and demand whatsoever of the said WILLIAM DOE, at and immediately before the time of his decease, in law or equity, or otherwise howsoever, of, in, to, or out of the same.

To have and to hold the said messuage or tenement and tract of three acres of land, hereditaments, and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said JOHN JAMES, his heirs and assigns, to the only proper use and behoof of the said JOHN JAMES, his heirs and assigns, forever.

IN WITNESS WHEREOF, We have hereunto set our hands and seals the day and year first above-written.

Signed, sealed and delivered	}	JOHN BURNS. (Seal.)	
in the presence of us,			WILLIAM JONES. (Seal.)
WM. F. BELSTERLING,			
ANDREW SMITH.			



PHILADELPHIA COUNTY, ss:

On the Fifth day of July, A. D. 1903, before me the Subscriber a Notary Public for the Commonwealth of Pennsylvania residing in Philadelphia personally appeared the above named JOHN BURNS and WILLIAM JONES, Administrators of the Estate of WILLIAM DOE who in due form of law acknowledged the above indenture to be their respective act and deed as such administrators to the end that the same might be recorded as such.

WITNESS my hand and seal the day and year aforesaid.

WILLIAM F. BELSTERLING,  
*Notary Public.*

(Seal.)

Commission Expires April 1, 1907.

**233. Guardian's\* Deed for Lands Sold by Order of Orphans' Court.**

THIS INDENTURE, made the Sixth day of September, A. D. one thousand nine hundred and ten, between Patrick Coe, Guardian, legally appointed by the Orphans' Court of the County of Philadelphia of the estate of JOHN BROWN, a minor son of HARRY BROWN, late of Philadelphia, Blacksmith, deceased, of the one part, and EDWARD JONES, of Philadelphia, Salesman, of the other part: Whereas by force and virtue of certain good conveyances and assurances in the law, duly had and executed the said HARRY BROWN became in his lifetime lawfully seized in his demesne, as of fee, of and in a certain lot or piece of land, situate in, &c., and bounded and described as follows (here describe the premises,) with the appurtenances, and being so thereof seised, died intestate, (or, if the deceased made a will, add the following after the word seised, "made his last will and testament in writing, bearing

\*Guardians are of two kinds, testamentary or such as are appointed by the decedent in his will and appointive, or such as are appointed by orphans' court where a minor inherits property and no guardian has ever been appointed. In drawing a deed from a guardian first ascertain how the guardian was appointed. If by will, recite that part of the will. If by the orphans' court, recite that fact as above.

The portion in brackets is a covenant which is not essential to the validity of the deed and is often omitted. Until bond has been entered by the guardian his deed is ineffectual to pass title. Therefore, at settlement, a certificate of the clerk of the orphans' court must be produced, showing that bond has been entered in conformity with the order of the court. It is good practice to record this certificate with the deed though the more usual practice is to have the clerk of the orphans' court certify to the entering of the bond as shown at end of deed, form, Par. 234, page 293. See also note to form, Par. 232, page 285.

date the                    day of                    , A. D.                    , wherein and whereby (among other things) he did give and devise the said plantation and tract of land unto his said son John Brown, and his heirs, as in and by the said in part recited will, since his decease duly proved and remaining in the Register's office at Philadelphia, reference being thereunto had, appears;") and whereas at an Orphans' Court held at Philadelphia aforesaid, in and for the said county, upon the petition of the said JOHN BROWN, the said PATRICK COE was duly appointed Guardian of the estate of the said JOHN BROWN during his minority, and it appearing to the said Court that the said JOHN BROWN was not possessed of a personal estate adequate to his maintenance and education, ([or "that the estate of said minor was 'in such a state of dilapidation and decy,'] [or 'so unproductive and expensive,'] that it would be to the interest and benefit of said minor that the estate should be sold,") the said Court did then and there make an order empowering the said PATRICK COE to make public sale of the said plantation and tract of land, the estate of the said JOHN BROWN, for the purposes aforesaid, and to make a title thereto to the purchaser; in pursuance whereof, the said PATRICK COE having first given bond with sufficient surety to the said Court, according to the Act of Assembly, for the faithful discharge of trust thus committed to him, did, on the                    day of                    , A. D. 19                    , on the premises aforesaid, in accordance with the said order, expose the premises therein mentioned to sale by public vendue, and sold the same to the said EDWARD JONES, at and for the sum of \$. . . . . he being the highest bidder, and that the highest and best price bidden for the same, which sale, on report thereof made to the Judges of the said Court, on the day of                    , A. D. 19                    , was confirmed by the said Court; and it was considered and adjudged by the said Court that the same should be and remain firm and stable forever, as by the records and proceedings of the said Court, reference thereunto being had, will fully appear. Now this indenture witnesseth, that the said PATRICK COE, for and in consideration of the sum of \$                    , to him in hand paid by the said EDWARD JONES, at and before the ensealing and delivery hereof, the receipt and payment whereof he doth hereby acknowledge, hath granted, bargained, sold, aliened, released, and confirmed, and by these presents (by virtue of the powers and authorities to him given by the aforesaid order of Orphans' Court, and pursuant to the directions thereof) doth grant, bar-

gan, sell, alien, release, and confirm unto the said EDWARD JONES, his heirs and assigns, all that the above-mentioned and described lot or piece of land, with the appurtenances thereto belonging. Together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, claim, and demand whatsoever of the said HARRY BROWN in his lifetime, at and immediately before the time of his decease, of, in, to, or out of the same.

To have and to hold the said plantation and tract of land, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said EDWARD JONES, his heirs and assigns, to the only proper use, benefit, and behoof of the said EDWARD JONES, his heirs and assigns, forever. [And the said PATRICK COE doth covenant, promise, and agree to and with the said EDWARD JONES, his heirs and assigns, by these presents, that he, the said PATRICK COE, hath not done, committed, or wittingly or willingly suffered to be done or committed, any act, matter, or thing whatsoever whereby the premises aforesaid, or any part thereof, is, are, or shall or may be impeached, charged or encumbered in title, charge, or estate, or otherwise howsoever.]

IN WITNESS WHEREOF, have hereunto set hand and seal the day and year first above-written.

Signed, sealed and delivered	}	
in the presence of us,		PATRICK COE. (Seal.)
WM. F. BELSTERLING,		(Seal.)
ANDREW SMITH.		

PHILADELPHIA COUNTY, ss:

On the                      day of                      , A. D. 19    , before me, the subscriber, a notary public for the Commonwealth of Pennsylvania residing in Philadelphia, personally appeared the above-named PATRICK COE, guardian of the estate of JOHN BROWN, a minor, and in due form of law acknowledged the foregoing indenture to be his act and deed as such guardian to the end that it might be recorded as such.

WITNESS my hand and seal the day and year aforesaid.

(Seal.)

WILLIAM F. BELSTERLING,  
*Notary Public.*

Commission expires, &c.

**234. Deed of Heirs and Guardian of Minor Heir Reciting Abstracts of Will and Orphans' Court Proceedings Under Price Act.**

THIS INDENTURE, Made the first day of August in the year of our Lord One Thousand Nine Hundred and Five (1905) BETWEEN G. F. B., single man, and W. C. B., single woman, H. G. B. and L. F., his wife, C. F. B. and M. L., his wife, and H. G. B., guardian of the estate of W. A. B., a minor, all of the city of Philadelphia (hereinafter called the grantors), and S. D. P., of the city of Philadelphia, gentleman, (hereinafter called grantee).

WHEREAS, J. D. and wife, by indenture bearing date the 7th day of July, A. D. 1887, and recorded at Philadelphia in Deed Book G. G. P. No. 276, page 442, &c., granted and conveyed the hereinafter described premises unto M. E. B., wife of G. B., in fee.

AND WHEREAS, The said M. E. B., being so thereof seised, afterwards departed this life on the 19th day of January, A. D. 1896, having first made and published her last will and testament in writing bearing date the 12th day of June, A. D. 1888, since her decease duly proved and registered in the office of the register of wills in and for the city and county of Philadelphia, and recorded in Will Book No. 182, page 576, &c.

WHEREIN AND WHEREBY, She did will (inter alia) as follows: "I give, devise and bequeath unto my children and unto the children of my said husband by a former marriage and their respective heirs forever, all my property, real, personal and mixed, of what nature, kind, soever and wheresoever the same shall be at the time of my death share and share alike."

WHEREAS, The said children of said M. E. B. and those of G. B., her husband by a former marriage, were W. P. B., H. G. B. and C. F. B., her own children, and G. H. B., W. C. B., E. E. B. and C. C. B., children of her husband by a former wife.

AND WHEREAS, The said W. F. B., one of the children above mentioned, departed this life on the 18th day of June, A. D. 1897, a widower intestate, leaving surviving him one child, the minor W. A. B., in whom said undivided one-seventh part or share in said premises is now vested in fee.

AND WHEREAS, At an orphans' court held at Philadelphia on the 18th day of July, A. D. 1903, of July Term, 1903, No. 53, the said H. P. B. was appointed guardian of the estate of W. A. B., a minor.

AND WHEREAS, At an orphans' court aforesaid held as aforesaid as of July Term, 1903, No. 53, upon petition duly presented to

the court on the 29th day of April, A. D. 1905, it was ordered and decreed that H. P. B., guardian as aforesaid, join with the other parties in interest in the sale and conveyance of the premises hereinafter described and granted unto the said J. T. T. for the sum of \$4,000 for the whole thereof free and clear of all encumbrances as therein mentioned. Security be entered in double the amount of the share of the minor, which security has since been duly entered.

AND WHEREAS, the said C. C. B. departed this life on or about the 4th day of March, A. D. 1903, unmarried and without issue, having first made and published her last will and testament in writing bearing date the 7th day of April, A. D. 1902, duly proven and registered in the office of the register of wills in and for the city and county of Philadelphia in Will Book No. 246, page 60, &c.

WHEREIN AND WHEREBY, After directing the payment of her just debts and funeral expenses she did will as follows: "All the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever of which I may be seised, possessed or entitled to, I give, devise and bequeath unto my beloved sister W. C. B., her heirs and assigns absolutely forever."

AND WHEREAS, The said E. E. B. departed this life on or about the 2d day of December, A. D. 1903, having first made and published her last will and testament in writing, bearing date the 25th day of March, A. D. 1903, duly proven Nov. 15, 1904, recorded at Philadelphia in Will Book No. 262, page 115, &c.

WHEREIN AND WHEREBY, She did will as follows: "Fourth," "All the rest, residue and remainder of my estate, real or personal whatsoever and wheresoever the same may be situate, of which I may be seised or possessed of, I give, devise and bequeath to my beloved sister, W. C. B., absolutely."

NOW THIS INDENTURE WITNESSETH, That the said grantor for and in the consideration of the sum of four thousand (\$4,000.00) dollars lawful money of the United States unto them well and truly paid by the said S. D. P. at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained and sold, released and confirmed, and by these presents do grant, bargain and sell, release and confirm unto the said S. D. P., his heirs, ALL THAT CERTAIN lot or piece

of ground with the two story and attic brick dwelling thereon erected SITUATE on the south side of F Street in the 50th Ward of the city of Philadelphia, at the distance of fifty-seven feet, seven inches (57'-7") westward from the west side of Eighth Street, CONTAINING in front or or breadth sixteen (16') feet and extending of that width in length or depth southward between two parallel lines at right angles to said F Street 50 feet, to a three-foot wide alley extending eastward into Eighth Street.

TOGETHER with all and singular the buildings, improvements, ways, streets, alleys, passages, water, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of them the said grantors as well in law and equity, of, in and to the same and every part thereof, to have and to hold said lot or piece of ground with said messuage or building thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, unto the said S. D. P., his heirs and assigns, to and for the only proper use and behoof of the said S. D. P., his heirs, and assigns forever.

AND the said grantors, G. F. B., W. C. B., H. G. B., C. F. B., for themselves, their heirs, executors and administrators do covenant and agree to and with the said grantee, his heirs and assigns and by these presents that they, the said grantors, their heirs, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances unto the said grantee, his heirs and assigns against them, the said grantors, their heirs, and against all and every person whomsoever lawfully claiming or to claim the same or any part thereof, by, from, or under them, or any of them, shall and will warrant and forever defend.

IN WITNESS WHEREOF, The parties of the first part have hereunto set their respective hands and seals, dated the day and year as above written.

Signed, Sealed and Delivered  
in the presence of  
WM. F. BELSTERLING,  
HENRY B. LANG.

}	G. F. B.	(Seal.)
	W. C. B.	(Seal.)
	H. G. B.	(Seal.)
	L. F. B.	(Seal.)
	C. F. B.	(Seal.)
	M. L. B.	(Seal.)
	H. G. B., <i>Guardian</i>	(Seal.)

## PHILADELPHIA COUNTY, ss:

On the first day of August, A. D. 1905, before me the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared the above named G. F. B., W. C. B., H. G. B., L. F. B., C. F. B. and M. L. B., and in due form of law acknowledged the above indenture to be their and each of their act and deed and desired the same might be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

WM. F. BELSTERLING,

*Notary Public.*

Commission Expires, &c. (Seal.)

## PHILADELPHIA COUNTY, ss:

On the first day of August, A. D. 1905, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared the above-named H. G. B., guardian of the estate of W. A. B., a minor, who in due form of law acknowledged the foregoing indenture to be his act and deed, as such guardian, to the end that it might be recorded as such:

WITNESS my hand and seal the day and year aforesaid.

WM. F. BELSTERLING,

*Notary Public.*

Commission Expires, &c. (Seal.)

## CITY AND COUNTY OF PHILADELPHIA, ss:

AT AN ORPHANS' COURT for the city and county aforesaid, held at Philadelphia on the 18th day of July, A. D. 1903, as of July Term, 1903, No. 53, H. G. B. was appointed guardian of the estate of W. A. B., a minor. And at an orphans' court for the city and county aforesaid, held at Philadelphia on the 29th day of April, 1905, the said H. G. B., guardian of the estate of W. A. B., the above-named minor, was ordered and decreed to join with the other parties in interest in the sale and conveyance, execution and delivery of all and every deed or deeds or other assurances in law necessary to vest the said minor's undivided one-seventh interest, part or share in said real estate, in the said S. D. P. in fee, and the said court ordered and decreed that said guardian was authorized to receive and receipt for the purchase money,

security to be entered in double the amount of the share of said minor, to wit, eight hundred sixty dollars, which security has been entered and approved.

WITNESS my hand and seal of said court this second day of August, A. D. 1905.

A. J. FORTIN,

1st Asst. Clerk O. C. (Seal.)

**235. Deed of Heirs and Corporation Guardian Containing Recitals of Title Gained by Will, Descent, Adverse Possession, Extinguishment of Ground Rent, Orphans' Court Proceedings Under Price Act, etc.**

THIS INDENTURE, Made the sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-four (1884), BETWEEN LUTHER G. SMITH, of the city of Philadelphia, and CLARA V. SMITH, his wife, EMMA E. STEARLY, of the said city, single woman, JOHN NEWTON, of the said city, and IDA I., his wife, and MARY S. RAINER, of the said city, single woman, all of the first part; "THE FIDELITY INSURANCE TRUST AND SAFE DEPOSIT COMPANY," GUARDIAN, of the estate of Mary Leath Courtney, a minor, of the second part; and PETER S. DILDINE, of the city of Philadelphia, gentleman, of the other part.

WHEREAS, Jacob Stearly was, in his lifetime, lawfully seised in his demesne, as of fee, of and in the several lots or pieces of ground and premises hereinafter particularly described, with the appurtenances, and being so thereof seised as aforesaid, departed this life on the twenty-second day of July, Anno Domini one thousand eight hundred and eighty-three (1883) having first made and published his last will and testament in writing bearing date the fourteenth day of March, Anno Domini, 1882, duly proven the thirteenth day of July, Anno Domini 1883, and remaining on record in the office of the register of wills in and for the City and County of Philadelphia, WHEREIN and WHEREBY, after directing the payment of his just debts and funeral expenses he, the said Jacob Stearly, did will as follows, viz: "ITEM I give, devise and bequeath all the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and where-soever the same may be situate and of which I may die seised, possessed or entitled to in manner following, to wit: One full, equal fifth part thereof unto my grandchild, CLARA D. SMITH, her heirs, executors, administrators and assigns forever abso-



lutely. One full, equal fifth part thereof unto my grandchild Emma E. Stearly, her heirs, executors, administrators and assigns forever absolutely. One full, equal fifth part thereof unto my grandchild Ida I. Newton, her heirs, executors, administrators, assigns forever absolutely. One full, equal fifth part thereof unto my grandchild Mary Rainer, her heirs, executors, administrators and assigns forever absolutely. And the remaining one-fifth part thereof unto my great-grandchild, Mary Leath Courtney, her heirs, executors, administrators, and assigns forever absolutely."

AND WHEREAS, All of the devisees named in said recited will are of full age except the said Mary Leath Courtney. AND WHEREAS, At an orphans' court for the City and County of Philadelphia, held at Philadelphia, on the twenty-ninth day of December, Anno Domini 1883, upon the petition of the said Mary Leath Courtney, who was then above the age of fourteen years, the said "The Fidelity Insurance Trust and Safe Deposit Company," was appointed guardian of her estate. AND WHEREAS, At an orphans' court for the city and county aforesaid, held at Philadelphia on the twenty-ninth day of November, Anno Domini 1884, the petition of the said "The Fidelity Insurance Trust and Safe Deposit Company," guardian as aforesaid, was presented setting forth "That the said Mary Leath Courtney is seised in her demesne as of fee of and in an equal undivided fifth part or share of and in the real estate hereinafter particularly described. That all the other parties interested in said real estate, being sui juris, are anxious and desirous of disposing of the same." That Peter S. Dildine, of the City of Philadelphia, has offered to purchase the said real estate for the price or sum of sixteen thousand dollars clear of all encumbrances, and all the other owners of said real estate have agreed to sell at said price, and are anxious and desirous, that the proper and necessary deeds and assurances for said real estate should be executed to the said Peter S. Dildine, and a perfect title for the same made to him, but are prevented from so doing on account of the inability of the petitioners to join with them in the execution and delivery of said deeds as guardian aforesaid, without the consent and order of the said court. That the said price offered for said real estate is much greater than the assessed value of same, and that the said amount is to the best of petitioner's knowledge and belief as large a price as can now be obtained for said property.

That it is to the advantage of said minor's estate that the said real estate should be sold, inasmuch as the same is in great need of repair and in a dilapidated condition. The petitioners therefore prayed the court to approve of the price offered for said real estate and authorize them to sell the said minors undivided fifth interest therein for one-fifth of the said price, offered as aforesaid, viz: \$3,200; and that they be authorized, ordered and directed as guardian of said Mary Leath Courtney, to join with the other owners of the above mentioned real estate in the execution and delivery of the proper and necessary deed or deeds and other assurances needful and necessary for vesting and conveying said real estate to the said Peter S. Dildine, in fee simple. WHEREUPON the said court upon due consideration of the said petition, ordered and decreed that the said "The Fidelity Insurance Trust and Safe Deposit Co.," Guardian of said Mary Leath Courtney, be authorized to sell the said minors one full, equal and undivided fifth part or share of and in the real estate hereinafter particularly described for the price or sum of three thousand two hundred dollars to Peter S. Dildine, his heirs and assigns, and that the said "The Fidelity Insurance Trust and Safe Deposit Co.," guardian as aforesaid, be authorized and directed to make, execute and deliver, or join with the other owners of said real estate in the execution and delivery of, all and every deed or deeds or other assurances in the law necessary to vest said minor's undivided fifth part or share in said real estate in the said Peter S. Dildine, in fee simple, and that said minor's undivided interest in said real estate so sold be and remain to the said Peter S. Dildine, his heirs and assigns, firm and stable forever, and the said guardian was thereby authorized to receive and receipt for said purchase money. And the said court further ordered that security be entered by said guardian in the sum of six thousand four hundred dollars, and approved of the bond of the said "The Fidelity Insurance Trust and Safe Deposit Company," as such security. Which security has since been duly entered.

NOW THIS INDENTURE WITNESSETH, That the said parties of the first and second parts hereto for and in consideration of the sum of sixteen thousand dollars lawful money of the United States of America, unto them well and truly paid by the said Peter S. Dildine at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained

and sold, released and confirmed, and by these presents, the said "The Fidelity Insurance Trust and Safe Deposit Co.," guardian as aforesaid (the party of the second part hereto), acting herein by virtue of the powers and authorities to them given by the above recited order of the orphans' court, and in pursuance of the directions thereof, do grant, bargain, and sell, release and confirm unto the said Peter S. Dildine, his heirs,

ALL THAT CERTAIN lot or piece of ground with the two-story and attic brick dwelling and two-story frame dwelling thereon, erected SITUATE on the south side of Fairmount Avenue, in the Twelfth Ward of the City of Philadelphia, described according to a recent survey thereof made by Andrew French, surveyor and regulator of the Fifth District, as follows, viz: Beginning at a point on the south side of said Fairmount Avenue at the distance of fifty-seven feet seven inches westward from the west side of Hermitage Street, thence extending southward at right angles with Fairmount Avenue through the middle of a wall, eighteen feet to a point, thence still southward on a line parallel with Fourth Street fifty-five feet, ten inches, thence westward parallel with said Fairmount Avenue fifteen feet to a point, thence northward parallel with the said Fourth Street seventy-four feet to the south side of said Fairmount Avenue, and thence eastward along the same sixteen feet, five inches to the place of beginning. Also all that certain lot or piece of ground with the two-story frame dwelling thereon erected SITUATE on the south side of Fairmount Avenue in the Twelfth Ward of the said city described according to a recent survey thereof made by Andrew French, surveyor and regulator of the Fifth District, as follows, viz: Beginning at a point on the south side of said Fairmount Avenue at the distance of seventy-four feet westward from the west side of Hermitage Street, thence southward partly through the middle of a nine-inch wall on a line parallel with Fourth Street fifty-nine feet, ten inches to a point, thence westward parallel with the said Fairmount Avenue fourteen feet, three inches, and one-eighth of an inch to a point, thence northward on a line parallel with said Fourth Street forty-six feet, nine inches to a point, thence still northward on a line at an angle of eighty-five degrees forty-nine and three-quarters minutes with said Fairmount Avenue, thirteen feet to the south side of said avenue, and thence eastward along the same thirteen feet, five inches to the place of beginning. Also all that certain lot or piece of ground with the

three-story brick dwelling, five-story brick building and one-story frame stable and other buildings and improvements thereon erected, SITUATE in the Twelfth Ward of the said city described according to a recent survey thereof made by Andrew French, surveyor and regulator of the Fifth District, as follows, viz: Beginning at a point on the south side of said Fairmount Avenue at the distance of eighty-seven feet, five inches, westward from the west side of said Hermitage Street, thence extending southward on a line at an angle of eighty-five degrees forty-nine and three-quarters minutes with said Fairmount Avenue, thirteen feet to a point, thence still southward on a line parallel with said Fourth Street forty-six feet, nine inches, to a point, thence eastward on a line parallel with the said Fairmount Avenue fourteen feet, three and one-eighth inches to a point, thence southward on a line parallel with said Fourth Street thirty-two feet, two inches and one-half of an inch to a point, thence eastward on a line parallel with said Fairmount Avenue sixty-nine feet to the west side of said Hermitage Street (formerly called Smith's Alley), thence southward along the same twenty-seven feet to the northwardly side of a certain court laid out parallel with said Fairmount Avenue and leading into and from the said Hermitage Street, and thence westward along the northwardly side of said court ninety-five feet, seven and three-quarters inches to a point, thence southward on a line parallel with said Fourth Street one foot, seven and one-quarter inches to a point, thence westward on a line parallel with said Fairmount Avenue, along the northwardly side, of said court (narrowed one foot, seven and one-quarter inches), twenty-four feet, five and one-quarter inches to a point, thence northward on a line parallel with the said Fourth Street forty-six feet, three inches to a point, thence eastward on a line parallel with said Fairmount Avenue, thence northward on a line parallel with said Fourth Street twenty-four feet, nine inches to a point, thence westward on a line parallel with said Fairmount Avenue one foot to a point, thence northward on a line parallel with said Fourth Street, partly through the middle of a nine-inch wall forty-nine feet, seven and three-quarter inches to a point in the southwardly side of said Fairmount Avenue, and thence eastward along the same thirty-four feet, eight inches to the place of beginning.

ALSO ALL THAT CERTAIN lot or piece of ground with the eight three-story brick dwellings thereon erected, SITUATE on the west-

erly side of Hermitage (formerly called Smith's Alley), in the Twelfth Ward of the said city described according to a recent survey thereof, made by Andrew French, surveyor and regulator of the Fifth District, as follows, viz: Beginning on the westerly side of said Hermitage Street at the distance of one hundred and nineteen feet and one-half of an inch southward from the south side of said Fairmount Avenue, thence extending westwardly on a line parallel with said Fairmount Avenue and along the north side of a certain court laid out parallel with said avenue ninety-five feet, seven and three-quarters inches to a point, thence southward on a line parallel with Fourth Street one foot, seven and one-quarter inches, thence westward on a line parallel with said Fairmount Avenue; along the north side of said court (as narrowed one foot, seven and one-quarter inches) twenty-four feet, five and one-quarter inches to a point, thence southward on a line parallel with said Fourth Street through the middle of a nine-inch wall twenty-nine feet, eight and three-quarters inches to a point, thence eastward on a line parallel with said Fairmount Avenue one hundred and twenty feet, one inch to the westerly side of said Hermitage Street, and thence northward along the same thirty-one feet, four inches to the place of beginning including on the northwardly side of said lot or piece of ground the said court upon which said dwellings front. AND ALSO ALL THAT CERTAIN lot or piece of ground with the two-story frame dwelling thereon erected, described according to a recent survey thereof made by Andrew French, surveyor and regulator of the Fifth District as follows, viz: SITUATE on the westwardly side of Hermitage Street, at the distance of seventy-four feet southwardly from the southwardly side of Fairmount Avenue in the Twelfth Ward of the said city, CONTAINING in front or breadth on the said Hermitage Street eighteen feet and one-half of an inch and extending in length or depth westward between lines parallel with said Fairmount Avenue sixty-nine feet, BOUNDED northwardly partly by other ground now of the estate of Jacob Stearly, deceased, but intended to be hereby conveyed to said Peter S. Dildine, and partly by ground of . Eastward by said Hermitage Street and southward and westward by other ground of the estate of Jacob Stearly, deceased, intended to be hereby conveyed to said Peter S. Dildine. THE PREMISES FIRST described being composed of two certain lots or pieces of ground which Ulrich Ruskstuhl and Margaret, his wife,

by indenture bearing date the fourth day of April, Anno Domini 1814, and recorded at Philadelphia in Deed Book I. H., No. 9, page 1, &c., granted and conveyed unto the said Jacob Stearly in fee. UNDER and SUBJECT to the payment of a certain yearly rent charge of fifteen Spanish milled silver dollars to John Redman, his heirs and assigns in equal half yearly portions or payments on the first day of the months of May and November in each and every year, forever free of all deductions or abatements for taxes or assessments. But free and clear discharge and indemnified of and from all other rents, rent charges, liens and encumbrances whatsoever, WHICH yearly rent charge of fifteen Spanish milled silver dollars John B. Newman and others, executors of the last will and testament of James Lyle, Anno Domini 1830, and recorded at Philadelphia, in Deed Book G. W. R., No. 36, page 371, &c., released and extinguished unto the said Jacob Stearly, his heirs and assigns. THE PREMISES SECOND described being the greater part of a certain lot or piece of ground which Peter Richmond by indenture, bearing date the eleventh day of May, Anno Domini 1842, and recorded at Philadelphia in Deed Book G. S., No. 38, page 670, &c., granted and conveyed unto the said Jacob Stearly, in fee. UNDER and SUBJECT to the payment of a certain yearly ground rent or sum of sixteen Spanish milled silver dollars payable to John Redman, his heirs and assigns in half yearly payments on the first day of the months of May and November in every year forever without any deduction for taxes, &c., WHICH yearly ground rent or sum of sixteen Spanish milled silver dollars John Kessler, Junior, trustee, by indenture, bearing date the twenty-third day of November, Anno Domini 1868 and recorded at Philadelphia in Deed Book J. T. O., No. 198, Page 15, &c., released and extinguished unto said Jacob Stearly his heirs and assigns. THE PREMISES THIRD described being composed as follows, viz: A portion thereof being a part of the said lot or piece of ground which Peter Richmond granted and conveyed to the said Jacob Stearly, in fee as above recited. Another part thereof John Shaw by Indenture bearing date the Twenty-second day of March, Anno Domini 1831, and recorded at Philadelphia in Deed Book A. M., No. 9, Page 500, &c., granted and conveyed unto the said Jacob Stearly, in fee, UNDER and SUBJECT to the payment of a certain yearly ground rent or sum of Forty-five dollars lawful silver money of the United States of America,

unto Jacob F. Hoeckley his heirs and assigns, on the first of the months of January and July in every year forever without deduction for taxes &c., WHICH yearly ground rent the said Jacob F. Hoeckley and Anna Elizabeth his wife by Deed Poll bearing the date the sixth day of April, Anno Domini 1831, and recorded at Philadelphia in Deed Book A. M., No. 10, Page 288, &c., released and extinguished unto the said Jacob Stearly, his heirs and assigns. AND William Martin by Deed Poll bearing date the Eight day of April, Anno Domini 1831, and recorded at Philadelphia in Deed Book A. M., No. 10, page 289, &c., did remise release and forever quit claim unto the said Jacob Stearly, his heirs and assigns all his (the said William Martin's) estate, right, title and interest in and to a certain gore or strip of ground mentioned and described in the above recited Indenture from John Shaw to said Jacob Stearly, AND the said Jacob Stearly and Mary M., his wife, by indenture bearing date the Eighth day of April, Anno Domini 1831, and recorded at Philadelphia in Deed Book A. M., No. 10, page 295, &c., granted and confirmed unto Isaac Griffith, his heirs and assigns, a certain yearly rent charge or sum of Eighteen Spanish Milled silver dollars, each dollar weighing seventeen pennyweights and six grains at least to be yielding and paying and to be had taken and received in half yearly payments on the first day of the months of October and April in every year thereafter forever without any deduction for Taxes &c., out of the premises therein particularly described, being the premises conveyed by the said John Shaw to the said Jacob Stearly in fee as above recited. WHICH yearly rent charge Lukens Griffith and Sarah his wife (by their Attorney Anthony P. Morris) by Indenture bearing date the fifth day of February, Anno Domini 1851, and recorded at Philadelphia in Deed Book G. W. C., No. 82, page 202, &c., released and extinguished unto the said Jacob Stearly, his heirs and assigns. ANOTHER PART OF SAID PREMISES THIRD DESCRIBED John Kessler by Indenture bearing date the third day of April, Anno Domini 1833, and recorded at Philadelphia in Deed Book Am M., No. 33, page 577, &c., granted and conveyed unto the said Jacob Stearly in fee. ANOTHER PART THEREOF being the greater part of a certain lot or piece of ground which Jonathan Collom and Mary his wife by Indenture bearing date the eighth day of April, Anno Domini 1831, and recorded at Philadelphia in Deed Book A. M., No. 10, page 291, &c., granted and conveyed unto the said Jacob Stearly,

in fee. AND THE REMAINING PART THEREOF being a part of a larger lot or piece of ground which Robert Ralston and others, Trustees of the last Will and Testament of Jonathan Bayard Smith, deceased, by Indenture bearing date the Eleventh day of May, Anno Domini 1826, and recorded at Philadelphia in Deed Book G. W. R., No. 9, page 356, &c., granted and conveyed unto the said Jacob Stearly in fee. THE PREMISES FOURTH described being composes as follows: viz; a PART THEREOF being a lot Twenty-feet in front on said Hermitage about one hundred and twenty feet—Jonathan Bayard Smith and Hannah his wife by Indenture bearing date the first day of January Anno Domini 1795, and recorded at Philadelphia in Deed Book E. T., No. 16, page 368, &c., granted and conveyed unto Richard Limehouse in fee. RESERVING thereout unto the said Jonathan Bayard Smith his Heirs and Assigns a certain yearly ground rent or sum of Twenty Spanish milled silver dollars. AND the said Richard Limehouse and Elizabeth his wife by Indenture bearing date the sixth day of January, Anno Domini 1806, and recorded at Philadelphia in Deed Book G. W. R., No. 9, page 355, &c., granted and conveyed said lot unto John Harrison, in fee. SUBJECT to the payment of said yearly ground rent or sum of Twenty dollars. AND the said John Harrison by Deed Poll bearing date the twenty-eighth day of March, Anno Domini 1826, and recorded at Philadelphia in Deed Book G. W. R., No. 9, page 356, &c., granted and conveyed said lot unto the said Jacob Stearly in fee, SUBJECT to the payment of said yearly ground rent or sum of Twenty dollars. AND Robert Ralston and others Trustees of the last Will and Testament of the said Jonathan Bayard Smith deceased, by the said recited Indenture bearing date the Eleventh day of May, Anno Domini 1826, and recorded at Philadelphia in Deed Book G. W. R., No. 9, page 356, &c., granted and conveyed unto the said Jacob Stearly, in fee, a lot of ground containing in front on said Hermitage street fifty-five feet six inches and extending in Depth Westward about one hundred and twenty feet (which lot included the said lot conveyed to Richard Limehouse as above recited) TOGETHER with all and singular the buildings, improvements, ways, alleys, passages, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining and the reversions, remainders, rents, issues and profits thereof and also all the estate, right, title interest, property



claim and demand whatsoever of them the said Trustees and of the said Jonathan Bayard Smith at any immediately before the time of his decease as well at law as in equity of, in to and out of the same. WHEREBY the said yearly ground rent or sum of Twenty dollars merged and became extinguished forever. ANOTHER PORTION of said premises fourth described being a part of said lot of Ground conveyed by Robert Ralston and others Trustees to said Jacob Stearly in fee, as above recited. AND THE REMAINING PORTION of said premises being the Southermost Two feet ten inches more or less of said premises although not covered by the dimensions of the lot conveyed by said recited Deed from Robert Ralston and others Trustees to Jacob Stearly in fee, was included within the boundary of said Lot of ground contained in said Deed and the said Jacob Stearly entered into possession by virtue thereof and held actual, adverse, continued, visible, notorious, distinct, and hostile possession thereof until the time of his decease, being a period of more than Fifty years. So that a perfect and indefeasible title to said remaining part of said premises fourth described was vested in said Jacob Stearly in fee simple, at the time of his decease by virtue of the Statute of Limitations of the Commonwealth of Pennsylvania AND THE premises fifth described being composed of the whole of a certain lot or piece of ground which Andrew J. Grauel and Amanda M. his wife and Lafayette Grauel and Phebe his wife by Indenture bearing date the nineteenth day of April, Anno Domini 1870 and recorded at Philadelphia in Deed Book J. A. H., No. 25, page 543, &c., granted and conveyed unto the said Jacob Stearly in fee and part of a certain lot or piece of ground which Jonathan Collom and Mary his wife by Indenture bearing date the eighth day of April, Anno Domini 1831, and recorded at Philadelphia in Deed Book A. M., No. 10, page 291, &c., granted and conveyed unto the said Jacob Stearly in fee.

Together with all and singular the buildings, improvements, ways, streets, alleys, passages, water, water courses, rights, liberties privileges, hereditaments and appurtenances whatsoever unto the hereby granted premises belonging or in any wise appertaining. And the reversions and remainders, rents, issues and profits, thereof and all the estate, right, title, interest property, claim and demand whatsoever of them the said parties of the first part and second part hereto and of the said Mary

Leath Courtney as well at law as in equity of, in and to the same and every part thereof.

To have and to hold the said Lots or pieces of ground above described with the said messuages or tenements and other buildings and improvements thereon erected hereditaments and premises hereby granted or mentioned and intended so to be with the appurtenances the said Peter S. Dildine his heirs and assigns. To and for the only proper use and behoof of the said Peter S. Dildine, his heirs and assigns forever. AND Luther G. Smith and John Newton for themselves respectively, and for their respective wives and their heirs, executors and administrators and the said Emma E. Stearly and Mary S. Rainer, for themselves respectively and their respective heirs, executors and administrators do by these presents covenant, grant and agree to and with the said Peter S. Dildine his heirs, and assigns, that they the said Luther G. Smith and Clara V. his wife, Emma E. Stearly, John Newton and Ida I. his wife and Mary S. Rainier, and their respective heirs, all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so to be with the appurtenances, unto the said Peter S. Dildine his heirs and assigns, against them the said Luther G. Smith and Clara V. his wife, Emma E. Stearly, John Newton and Ida I. his wife and Mary S. Rainier, and their respective heirs and against all and any other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by, from, or under them or any of them shall and will warrant and forever defend And the said "The Fidelity Insurance Trust and Safe Deposit Co.," guardian as aforesaid. Doth covenant, promise and agree to and with the said Peter S. Dildine, his heirs and assigns by these presents that It the said The Fidelity Insurance Trust and Safe Deposit Co., Guardian as aforesaid hath not at any time heretofore made, done, suffered or committed any act, matter or thing in deed or in law whereby or by means whereof the premises hereby granted or any part thereof are is or can be impeached, charged or affected in title, estate or otherwise howsoever.

IN WITNESS WHEREOF the said parties of the first part have hereunto interchangeably set their hands and seals, and the said "The Fidelity Insurance Trust and Safe Deposit Co.," guardian as aforesaid hath hereunto affixed its common or corporate seal Dated the day and year first above written.

SEALED AND DELIVERED	}	LUTHER G. SMITH	(Seal.)
IN THE PRESENCE OF		CLARA V. SMITH	(Seal.)
us		EMMA E. STEARLY	(Seal.)
EDWIN F. GLENN,		JOHN NEWTON	(Seal.)
JOHN A. SINER.		IDA. T. NEWTON	(Seal.)
		MARY S. RAINIER	(Seal.)

As to the Fidelity, &c., Co	}	STEPHEN A. CALDWELL, <i>Pres.</i>
Guardians & C.,		Attest. R. PATTERSON, <i>Sec.</i>
R. L. Wright, Jr.,		(Corporate Seal.)
H. H. PIGOTT,		

RECEIVED the day of the date of the above Indenture of the above named Peter S. Dildine the sum of Sixteen thousand dollars being the full consideration money above mentioned.

WITNESSES AT SIGNING	}	LUTHER G. SMITH
EDWIN F. GLENN,		CLARA V. SMITH
JOHN A. SINER.		JOHN NEWTON
		IDA. T. NEWTON
		EMMA E. STEARLY
		MARY S. RAINIER

As to the Fidelity and Trust Co.	}	
R. T. WRIGHT, JR.,		R. PATTERSON, <i>Treas.</i>
H. H. PIGOTT,		

ON THE sixteenth day of December, Anno Domini 1884, before me the subscriber a Notary Public for the Commonwealth of Pennsylvania residing in the City of Philadelphia personally appeared Luther G. Smith and Clara V. his wife, Emma E. Stearly, John Newton and Ida I., his wife, and Mary S. Rainier, and in due form of law acknowledged the above written Indenture to be their and each of their act and deed and desired the same might be recorded as such AND the said Clara V. Smith and Ida I. Newton being of full age and separate and apart from their said husbands by me thereon privately examined and the full contents of the above deed being by me first made known unto them did thereupon declare and say that they did voluntarily and of their own free will and accord, sign, seal, and as their act and deed deliver the above written Indenture; Deed or Conveyance, without any coercion or compulsion of their said husbands.

Witness my hand and Notarial seal, the day and year aforesaid.

(Seal.)

EDWIN F. GLENN,  
*Notary Public.*

ON THE eighteenth day of December, Anno Domini 1884, before me the subscriber a Notary Public for the Commonwealth of Pennsylvania residing in the City of Philadelphia personally appeared Robert Patterson, Secretary of the above named The Fidelity Insurance Trust and Safe Deposit Co., who being duly affirmed according to law did depose and say that he was present and saw Stephen A. Caldwell as President of the said Corporation affix the seal of the said corporation to the above Indenture and that the seal set and affixed to the said Indenture is the common or corporate seal of the said "The Fidelity Insurance Trust and Safe Deposit Co.," and that the said Indenture was duly sealed and delivered by the said President as and for the act and deed of the said corporation, for the purposes therein mentioned, and that the name of this deponent and of the said Stephen A. Caldwell, President aforesaid, subscribed to the said Indenture in attestation of the due execution and delivery thereof by the said "The Fidelity Insurance Trust and Safe Deposit Co.," are of their own proper and respective handwritings.

Affirmed and subscribed before me this  
eighteenth day of December, Anno Domini 1884.

R. T. WRIGHT, JR.,  
(Seal.) *Notary Public.*

R. PATTERSON, *Sec.*

CITY AND COUNTY OF PHILADELPHIA, ss:

AT an ORPHANS' COURT for the City and County aforesaid held at Philadelphia on the twenty-ninth day of November, A. D. 1884, the said The Fidelity Insurance Trust and Safe Deposit Co., Guardian of the estate of Mary Leath Courtney, the above minor, was authorized to sell the said minor's one full equal and undivided fifth part or share of and in the Real Estate in the Above Indenture described to Peter S. Dildine, his heirs, and assigns and the said Guardian was authorized and directed to make, execute and deliver or join with the other owners of said Real Estate in the execution and delivery of all and every deed or deeds or other assurances in the law necessary to vest said minor's undivided fifth part or share in said Real Estate in the

said Peter S. Dildine in fee simple and the said Court ordered and decreed that the said minor's undivided interest in said Real Estate so sold be and remain to the said Peter S. Dildine his heirs and assigns firm and stable forever, and the said guardian was authorized to receive and receipt for the purchase money, security to be entered in the sum of Six thousand four hundred dollars and the bond of said company was approved as such security which security has been duly entered. Witness my hand and the seal of the said Court this 19th day of December, Anno Domini 1884.

(Seal.)

A. J. FORTIN,  
1st. Asst. Clerk.

Recorded in the office for Recording of Deeds in and for City and County of Philadelphia in Deed Book J. O. D., No. 238, Page 528, &c. Witness my hand and seal of office this Twentieth day of December, A. D. 1884.

(Seal.)

JOHN O'DONNEL,  
*Recorder of Deeds.*

**236. Sheriff's Deed** \*(New Form Under Act of April 29, 1905.)

Know all Men by these Presents that I, Joseph Gilfillan, Sheriff of the County of *Philadelphia* in the State of Pennsylvania, for and in consideration of the sum of *Fifteen Hundred* (\$1500.00) dollars, to me in hand paid, do hereby grant and convey to **Anna S. Lanning**, *widow, of the City of Philadelphia.*

**All that certain** *lot or picce of ground with the messuage or tenement thereon erected situate on the East side of T Street at the distance of One Hundred and forty feet Southward from the South side of S Street in the Fiftieth Ward of the City of Philadelphia, containing in front or breadth on said T Street, Fourteen feet and extending of that width in length or depth Eastward between parallel lines at right angles with said T Street Fifty-seven feet three inches. Bounded Westward by said T Street, Southward by ground now or late of John Joseph Alter, Northward by ground now or late of Thomas Long, and Eastward by a certain four feet wide alley leading Southward into X Street, and connecting with another four feet wide*

\*This is from the regular printed form, which can be purchased at any legal stationer's. The words in italics are to be filled in by the conveyancer.

*alley leading Westward into said T Street. Being the same premises which Richard Dintel and Maggie his wife, by Indenture bearing date the Ninth day of January 1907 and recorded in the office for the Recording of Deeds in and for the City and County of Philadelphia in Deed Book W. S. V. No. 767, Page 171, &c., granted and conveyed unto the said MARTIN SELLMAN in fee. Together with the free use and privilege of the aforesaid two several four feet wide alleys at all times hereafter forever, AND the same having been sold by me to the said grantee, on the first day of August Anno Domini one thousand nine hundred and ten after due advertisement,, according to law, under and by virtue of a writ of LEVARI FACIAS issued on the sixth day of July Anno Domini One Thousand nine hundred and ten, 1910, out of the Court of Common Pleas, No. 1, as of March Term, one thousand nine hundred and ten, (1910) Number 3809, at the suit of ANNA S. LANNING, Assignee of EDWARD H. STANTON, Mortgagee, against MARTIN SELLMAN, Mortgagor and Real Owner.*

**In witness whereof,** I have hereunto affixed my signature, this tenth day of *August* Anno Domini one thousand nine hundred and *ten*, (1910).

JOSEPH GILFILLAN.

### **Commonwealth of Pennsylvania, ss:**

Before the undersigned, *Prothonotary* of the *Common Pleas Court of Phila.* personally appeared JOSEPH GILFILLAN Sheriff of Philadelphia County aforesaid, and in due form of law declared that the facts set forth in the foregoing deed are true, and that he acknowledged the same in order that said deed might be recorded.

**Witness** my hand and seal of said court, this tenth day of *August* Anno Domini one thousand nine hundred and *ten*, (1910).

CRAIG BIDDLE,  
*Prothonotary.*

*per* JAS. W. FLETCHER,  
*Dep. Prothy.*

### **237. Deed, Individual, to Trustees of an Unincorporated Church.**

**This Indenture,** Made the *ninth* day of *September* in the year of our Lord one thousand nine hundred and *eleven*, (1911) **Be-**

tween *M. G., of the city of Philadelphia, State of Pennsylvania, and S., his wife* (hereinafter called the grantors), of the one part and *J. D., V. L. and S. K., all of the said City and State, Trustees for St. Michael's Orothodox Church,* (hereinafter called the grantees), of the other part, **Witnesseth**, That the said grantors for and in consideration of the sum of *One (\$1.00) Dollar*, lawful money of the United States of America, unto *them* well and truly paid by the said grantee at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, *have* granted, bargained and sold, released and confirmed, and by these presents *do* grant, bargain and sell, release and confirm unto the said grantees *their heirs* and assigns, **All that certain lot or piece of ground with the buildings and improvements thereon erected, described according to a plan and survey thereof made by F. B. Surveyor and Regulator of the Fourth Survey District of the City of Philadelphia, as follows, to wit:** BEGINNING at a point on the East side of Sixth Street, (fifty feet wide) at a distance of Two Hundred and nineteen (219') feet one and one-quarter ( $1\frac{1}{4}$ ") Southward from the Southerly line of Green Street (fifty feet wide) in the Twelfth Ward of the City of Philadelphia. **Containing** in front or breadth on said Sixth Street Eighteen feet and extending of that width in length or depth Eastward between parallel lines at right angles to said Sixth Street on the North line thereof partly through the center of a two feet six inches wide alley, One Hundred and Nineteen feet, six and three-eighths inches, ( $119'-6\frac{3}{8}"$ ) to a point, in a line drawn parallel with Randolph Street and at a distance of Seventy-five feet (75') Westward therefrom, and on the South line thereof One hundred and Nineteen feet two and three-eighths inches, ( $119'-2\frac{3}{8}"$ ) to a point in said line. **Being** the same premises which *C. K., of the City of Philadelphia and C. E. K., his wife*, by Indenture bearing date the 17th day of January, A. D. 1908, and recorded in the office for the Recording of Deeds in and for the County of Philadelphia, in Deed Book *W. S. V., No. 940, Page 449, &c.*, granted and conveyed unto the said *M. G. in fee*. **Together** with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the revisions and remainders, rents, issues

and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of *them* the said grantors as well at law as in equity, of, in, and to the same. **To have and to hold** the said lot or piece of ground above described *with the buildings and improvements thereon erected*, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said grantees *their heirs* and assigns, to and for the only proper use and behoof of the said grantees *their heirs* and assigns forever. *In trust nevertheless for the uses and purposes of St. MICHAEL'S ORTHODOX CHURCH with power to the said J. D., V. L. and S. K. trustees, to sell and convey in fee simple and to mortgage the whole or any part of the aforesaid premises and appurtenances to any person or persons and for such sum or sums of money as the said congregation of St. Michael's Orthodox Church shall, by a majority vote at a meeting held for the purpose of considering that question, may appoint and direct.* **And** the said M. G. and S., his wife, grantors, for themselves, their heirs, executors and administrators, **do** covenant, promise and agree, to and with the said grantees, *their heirs* and assigns, by these presents, that *they, the said grantors, their heirs all and singular* the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said grantees, *their heirs* and assigns, against *them, the said grantors, their heirs* and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under *him, her, them,* or any of them, shall and will WARRANT and forever DEFEND.

**In Witness Whereof,** The parties of the first part have hereunto set *their* hands and seals, dated the day and year first above written.

**Sealed and Delivered**

in the presence of us:

Robt. Roe,	}	M. G.	(Seal.)
John Doe.		S. G.	(Seal.)

**Received** on the day of the date of the above indenture, of the above-named grantees *the sum of \$1.00 being the full consideration above mentioned.*

M. G.



On the *ninth* day of *September*, Anno Domini 1911, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared the above-named *M. G. and S., his wife*, and in due form of law acknowledged the above INDENTURE to be *their* act and deed, and desired the same might be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

*Robt. Roe,*  
Notary Public.

*Commission Expires, Jan. 23, 1913.*

### 238. Voluntary Deed of Partition by Tenants in Common.

THIS INDENTURE, Made the twenty-fourth day of November, A. D. one thousand nine hundred and nine, between WILLIAM BROWN, of Philadelphia, of the one part, and THOMAS BROWN, of Philadelphia, of the other part: WHEREAS, the said WILLIAM BROWN and THOMAS BROWN now stand seised in fee simple, as tenants in common, of and in a certain tract or parcel of land, situate, lying, and being in, &c., containing, &c. (here describe the whole tract). Now this indenture witnesseth, that the parties to this indenture have agreed to make, and by these presents do make, a full, just, equal, perfect, and absolute partition and division between them, of and in the aforesaid tract of land, according to their respective shares and interests therein, in manner following, that is to say that the said WILLIAM BROWN and his heirs shall have all that piece or allotment of land, part of the said tract, beginning (here describe the land), containing, &c., together with the messuages, edifices, buildings, and improvements on the said described piece of land erected, standing, or being, and all the rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof. To have and to hold the same unto the said WILLIAM BROWN, his heirs and assigns, forever, in severalty, as his and their full part, share, and dividend, of and in all and singular the premises: And the said THOMAS JONES doth by these presents, for himself and his heirs, give, grant, allot, assign, set over, release, and confirm, unto the said WILLIAM BROWN, and to his heirs and assigns, forever, the said described price or allotment of land, with the appurtenances: To have and to hold to him, the said WILLIAM BROWN, his heirs and

assigns, to the only proper use and behoof of him, the said WILLIAM BROWN, his heirs and assigns, forever, in severalty: And the said THOMAS BROWN, for himself, his heirs, executors, and administrators, doth covenant to and with the said WILLIAM BROWN, his heirs and assigns, and every of them, by these presents, that he, the said WILLIAM BROWN, his heirs and assigns, shall, or lawfully may, from time to time, and at all times hereafter, forever, freely, peaceably, and quietly have, hold, occupy, possess, and enjoy the said first described piece or allotment of land, containing, &c., with the appurtenances, and receive and take the rents, issues, and profits thereof, without the let, suit, trouble, molestation, interruption, or denial of him, the said THOMAS BROWN, his heirs and assigns, or any other person or persons whatsoever, lawfully claiming, or to claim, by, from, or under him, them, or any of them, or by or with his, their, or any of their acts, means, consent, privity, or procurement. And that the said THOMAS BROWN and his heirs shall have that piece or allotment of land (residue of the said tract), beginning (here describe the land), containing, &c., together with the messuages, edifices, buildings, and improvements on the said described piece of land erected, standing, or being, and all the rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof: to hold and enjoy the same unto the said THOMAS BROWN, his heirs and assigns, forever, in severalty, as his and their full part, share, and dividend of, and in all and singular the premises: And the said WILLIAM BROWN doth, by these presents, for himself and his heirs, give, grant, allot, assign, set over, release, and confirm, unto the said THOMAS BROWN, and to his heirs and assigns, forever, the said last described piece or allotment of land, with the appurtenances: To have and to hold to him, the said THOMAS BROWN, his heirs and assigns, to the only proper use and behoof of the said THOMAS BROWN, his heirs and assigns, in severalty, forever: And the said WILLIAM BROWN, for himself, his heirs, executors, and administrators, doth covenant to and with the said THOMAS BROWN, his heirs and assigns, and every of them, by these presents, that he, the said THOMAS BROWN, his heirs and assigns, shall or lawfully may, from time to time, and at all times hereafter, forever, freely, peaceably, and quietly, have, hold, occupy, possess, and enjoy the said last-described piece or allot-

ment of land, containing, &c., with the appurtenances, and receive and take the rents, issues, and profits thereof, without the let, suit trouble, molestation, interruption, or denial of him, the said WILLIAM BROWN, his heirs or assigns, or of any other person or persons whatsoever, lawfully claiming, or to claim, by, from, or under him, them, or any of them, or by or with his, their, or any of their acts, means, consent, privity, or procurement.

IN WITNESS WHEREOF, The said parties have hereunto set their hands and seals the day and year aforesaid.

Signed, sealed and delivered	}	
in the presence of		THOMAS BROWN. (Seal.)
ROBERT ROE,		WILLIAM BROWN, (Seal.)
JOHN DOE.		

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss:

On the twenty-fourth day of November, A. D. 1909, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared the above-named WILLIAM BROWN and THOMAS BROWN, who in due form of law acknowledged the foregoing indenture to be their and each of their act and deed to the intent that the same might be recorded as such.

JOHN DOE,  
*Notary Public.*

Commission Expires, first day of July, 1912.

### 239. Master's Deed in Partition in Equity.

**Whereas,** On the 21st day of January, A. D. 1912, in the Court of Common Pleas No. 1, of Philadelphia county, in the Commonwealth of Pennsylvania, sitting in equity of Dec. Term, 1911, to number 921, a bill of complaint was filed by Maria Bloom, plaintiff, against Otto Bloom and Anna Bloom, defendants, setting forth (inter alia) that the parties therein named as plaintiff and defendants, together and undivided did hold a certain tract of land situate in said county, and bounded and described as follows (here set out the description). And praying that partition thereof be made among said parties. Whereupon the cause was so proceeded in that partition was decreed and the cause referred to Andrew Long, Esq., as master, to make partition of the land,

&c., and the master having made report that the land could not be divided without prejudice, &c., and having valued, and appraised the same, and the parties having refused to accept the land at the valuation, the court did, on the 27th day of May, A. D. 1912, order that the master make sale thereof at public auction. Pursuant to which order the master did, on the fifteenth day of June, A. D. 1912, sell the land to Alfred Cameron for the sum of ten thousand (\$10,000) dollars; which sale on the return day thereto made, was on the first day of July, A. D. 1912, approved and confirmed by the court and adjudged to remain firm and stable forever.

Now this Indenture Witnesseth, That Andrew Lang, Esq., master of virtue of the power vested in him by the order aforesaid, and in the consideration of the sum of ten thousand (\$10,000) dollars, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said Alfred Cameron, his heirs and assigns, the tract of land hereinbefore described, together with all and singular the rights, privileges, hereditaments and appurtenances thereunto, belonging or in any wise appertaining: To have and to hold the same for such estate as the parties named in said bill of complaint as plaintiff and defendants had therein at the time of the filing of said bill.

In witness whereof the said master hath hereunto set his hand and seal, this tenth day of July, A. D. 1912.

ANDREW LANG. (Seal.)  
*Master.*

STATE OF PENNSYLVANIA,  
CITY AND COUNTY OF PHILADELPHIA, <sup>ss:</sup>

On this tenth day of July, A. D. 1912, before me, the subscriber, a notary public in and for the Commonwealth of Pennsylvania, residing in said county, personally appeared Andrew Lang, Esq., named as master in the foregoing indenture, and acknowledged the said indenture to be his act and deed, as master, in pursuance of the decree set forth in said indenture for the sale of the land therein described.

Witness my hand and seal this tenth day of July, A. D. 1912.

WILLIAM BLINN,  
*Notary Public.* (Seal.)  
Commission Expires Mar. 1, 1913.

**240. Administrator's Deed for Lands Sold by Order of Orphans' Court in Partition.**

This indenture, made the twenty-first day of August, in the year of our Lord one thousand nine hundred and ten, between JOHN GREEN and EARL WHITE, administrators of all and singular the goods and chattels, rights and credits which were of JOHN JONES, late of Philadelphia, farmer, deceased, of the one part, and JOHN BLACK, of Philadelphia, gentleman, of the other part: WHEREAS, The said JOHN JONES was, in his lifetime, lawfully seised in his demesne, as of fee, of and in a certain lot or tract of land, situated in Philadelphia, and bounded and described as follows, that is to say, beginning at (here describe the land), containing , with the appurtenances, and being so thereof seised as aforesaid, died intestate; and whereas at an orphans' court, held at Philadelphia, in and for the County of Philadelphia aforesaid, the       day of       , A. D. 19       , upon the petition of HARRY JONES, eldest son and heir-at-law (or as the case may be) of the said JOHN JONES, praying the court to award an inquest to make partition of the said real estate of the said intestate, in the said petition mentioned, to and among his children and representatives, in such manner and in such proportions as by the laws of Pennsylvania is directed and appointed, if such partition could be made without prejudice to or spoiling the whole, otherwise to value and appraise the same, the said inquest was awarded by the court, according to the prayer of the said petitioner; whereupon a writ of partition or valuation issued out of the said court, bearing test the       day of       , A. D. 19       , to the sheriff of the said county directed, commanding him to summon an inquest to make partition of the said real estate to and among the children and representatives of the said intestate according to law, if such partition could be thereof made without prejudice to and spoiling the whole; but if such partition could not be made thereof as aforesaid, then to value and appraise the same; and that the partition or valuation so made he should distinctly and openly have before the judges of the said court, at Philadelphia, the       day of       , A. D. 19       . At which day, before the judges aforesaid, the sheriff of the said county, to wit, CHARLES RAYMOND, ESQ., made return of the said writ, with a schedule thereunto annexed, by which schedule or inquisition, under the hand and seal as well of the

said sheriff as of the inquest therein named, it appears, by the oaths and affirmation of the said inquest, that the real estate in the said writ mentioned could not be parted and divided to and among the parties therein named without prejudice to or spoiling the whole thereof; and therefore the inquisition aforesaid, upon their oaths or affirmations aforesaid, had valued and appraised the same at the sum of                    dollars, which return and valuation were, on motion, confirmed by the court. And whereas all the heirs and legal representatives of the said JOHN JONES having severally and respectively refused to take the said lot or tract of land at the valuation aforesaid, the court did, upon the application of the said HARRY JONES (or other party, as the case may be), grant a rule upon all the heirs and legal representatives of the said intestate to show cause, at an Orphans' Court to be held at Philadelphia, in the County of Philadelphia, the                    day of                    , next ensuing, why the said real estate should not be sold according to the act of general assembly in such case made and provided; at which said time and place, legal notice of the aforesaid rule being proved to have been duly given to all the heirs and legal representatives of the said intestate, and no cause being shown why the said real estate should not be sold as aforesaid, the court did then and there make an order commanding the said JOHN GREEN and EARL WHITE, administrators as aforesaid, to expose the aforesaid lot or tract of land of the said intestate to public sale, on the premises (or as the case may be), upon the terms in the said order directed. In pursuance whereof, the said administrators, having first given sufficient security, according to law, for the faithful execution of the power committed to them did, in accordance with the directions of the said order, expose the premises therein mentioned to sale by public vendue, and sold the same to the said JOHN BLACK, at and for the sum of                    dollars, he being the highest bidder, and that the highest and best price bidden for the same, which sale, on return thereof made to the judges of the same court, was, on the day of                    , last past, confirmed; and it was considered and adjudged by the said court that the said lot or tract of land, with the appurtenances so sold as aforesaid, should be transferred and vested in the said JOHN BLACK, as fully as the said JOHN JONES held the same at his decease, subject and liable to the payment of the purchase money, according to the terms prescribed in the

said order, as by the records and proceedings of the same court, remaining at

aforesaid, relation thereunto being had, will more fully and at large appear. Now this indenture witnesseth, that the said JOHN GREEN and EARL WHITE, administrators, as aforesaid, for and in consideration of the said sum of

dollars, to them in hand paid by the said JOHN BLACK, at and before the ensealing and delivery hereof, the receipt and payment whereof they do hereby acknowledge, have granted, bargained, sold, aliened, released, and confirmed, and by these presents (by virtue of the powers and authorities to them given by the aforesaid order of orphans' court, and pursuant to the directions thereof) do grant, bargain, sell, alien, release, and confirm unto the said JOHN BLACK, his heirs and assigns, all that the above-mentioned and described lot or tract of land, with the appurtenances. Together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, claim, and demand whatsoever of the said JOHN JONES in his lifetime, at and immediately before the time of his decease, of, in, to, or out of the same.

To have and to hold the said lot or tract of land, hereditaments, and premises, hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said JOHN BLACK, his heirs and assigns, to the only proper use, benefit, and behoof of the said JOHN BLACK, his heirs and assigns, forever. (And the said JOHN GREEN and EARL WHITE do severally, but not jointly, or the one for the other, or for the act or deed of the other, but each for his own act only, covenant, promise and agree, to and with the said JOHN BLACK, his heirs and assigns, by these presents, that they, the said JOHN GREEN and EARL WHITE have not, nor hath either of them done, committed, or wittingly, or willingly suffered to be done or committed any act, matter, or thing whatsoever, whereby the premises aforesaid, or any part thereof, is, are, or shall or may be impeached, charged, or encumbered in title, charge, or estate, or otherwise howsoever.)

IN TESTIMONY WHEREOF, The said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of WILLIAM SLOAN, JACOB ROONEY.	}	JOHN GREEN. (Seal.) EARL WHITE. (Seal.)
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\*Add administrator's acknowledgment as in form, Par. 209, page 269. Covenant in brackets is not necessary and may be omitted.

**241. Sheriff's Deed in Partition by a Common Pleas Court.**

I, A. T., high sheriff in and for the City and County of Philadelphia, in the State of Pennsylvania, to all to whom these presents shall come, send greetings: Whereas, a certain writ of breve de partitione facienda, lately issued out of the Common Pleas Court No. 3, for the City and County of Philadelphia, tested at Philadelphia the first day of December, Anno Domini, 1902, and to me directed at the suit of W. W. S., in order to have inter alia the three-story brick messuage or tenement and lot or piece of ground hereinafter particularly described, and granted, parted, and divided between him, the said W. W. S., and G. S. and M. S., minor children by their guardian, J. J. M., to wit, Number Two (No. 2), all that certain (here insert the description of the premises). And whereas, I returned to the Judges of the Common Pleas Court No. 3, for the City and County of Philadelphia, that in obedience to the said writ I had gone with twelve honest and lawful men of my bailiwick to the tenements and premises in the said writ described with the appurtenances, the parties to said writ having been warned and as many as chose to be there being present, which twelve honest and lawful men, upon their oaths and affirmations, respectively did say that the said lands and tenements could not be divided without prejudice to or spoiling the whole, and therefore they had valued and appraised the said lands and tenements in the said writ described, as follows, to wit: Number One (No. 1), at five thousand five hundred dollars, and Number Two (No. 2) at two thousand dollars, subject to the said ground rent (or as the case may be) mentioned in the above-recited writ, lawful money of Pennsylvania: And whereas, the said parties declined and refused to take the lands and tenements in the said writ described with the appurtenances, at the appraised value, as appears of record in the said court: Whereupon the return to the said writ of partitione facienda was approved of by the Judges aforesaid, demandant aforesaid prayed that the premises be sold agreeably to the act of assembly in



such case made and provided, and it was accordingly ordered by the said Judges that the lands and tenements in the said writ described, with the appurtenances, be sold at public vendue, agreeably to the act of assembly, after notice and advertisements twenty days previous thereto. Wherefore, by a certain order of sale issued out of the said court, to me directed, bearing teste the first day of February, Anno Domini 1903, I was commanded that the lands and tenements in the said writ described, with the appurtenances, I should expose to sale at public vendue, having first given due, fair, and legal notice of the time and place of sale thereof, agreeably to the directions of the said act of assembly, and the order of court thereon, and the money arising from the said sale or sufficient sureties therefor, to the satisfaction of all parties concerned, I should bring into the said Court to be held at Philadelphia the Monday of March then next, to be distributed and paid by order of said Court to and among the several parties entitled to receive the same in lieu of their respective parts and purparts of the premises in the said writ described, with the appurtenances, according to their just rights and proportion, and to abide such further order as should be made by the said Court in the premises, and that I should have then and there the said writ: And whereas, I, the said sheriff, in obedience to the last recited writ or order of sale, after having given due, fair, and legal notice, according to the directions thereof, of the time and place of sale twenty days previous thereto, by advertisements in the public newspapers and by hand bills set up in the most public places in my bailiwick, did, on Monday, the third day of February, in the year of our Lord 1902, at half-past five o'clock in the evening, at Room 676 City Hall, in the City of Philadelphia, expose (inter alia) the said three-story brick messuage or tenement and lot or piece of ground herein above particularly described, with the appurtenances, to sale by public vendue or outcry, when and where I sold the same to D. T. M., of the said City of Philadelphia, in the state aforesaid, for the price or sum of one thousand and twenty-five dollars, he being the highest and best bidder, and that the highest and best price bidden for the same. Now, know ye, that I, the said A. T., high sheriff as aforesaid, for and in consideration of the said sum of one thousand and twenty-five dollars, lawful money of the United States of America, to me in hand well and truly paid by the said D. T. M., at or before the sealing and delivery

hereof, the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents according to the directions of the said last recited writ or order of sale, and by force and virtue thereof, and of the constitution and laws of this commonwealth, in such case made and provided, do grant, bargain, and sell unto the said D. T. M., his heirs and assigns, all that the aforesaid certain three-story brick messuage or tenement and lot or piece of ground (here describe premises), together with the free use and privilege of the said alley as a passage way and watercourse, at all times hereafter forever, and together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof: And also, all the estate, right, title, interest, property, claim, and demand whatsoever of them, the said W. W. S., G. S. and M. S., minor children as aforesaid, by their guardian, J. J. M., either at law, in equity, or otherwise howsoever, of, in, and to, or out of, the same and every part and parcel thereof, to have and to hold all and singular the hereditaments and premises above particularly described and hereby granted or mentioned or intended so to be, with the appurtenances, unto the said D. T. M., his heirs and assigns, to and for the only proper use and benefit and behoof of the said D. T. M., his heirs and assigns forever, according to the form, force, and effect of the laws and usages of this commonwealth, in such case made and provided.

IN WITNESS WHEREOF, I, the said sheriff, have hereunto set my hand and seal, this twenty-eighth day of March, in the year of our Lord one thousand nine hundred and three (1903).

A. T. (Seal.)  
Sheriff.

Add sheriff's acknowledgment as in form, Par. 236, page 308.

Partition by common pleas courts under the common law is nowadays rarely used. The most usual mode of partition is by equity.

#### 242. Quit Claim Deed (Usual Form).

**This Indenture**, made the *ninth* day of *April*, in the year of our Lord one thousand nine hundred *six* (1906), **Between Thomas Jones and Elsie, his wife, both of Philadelphia, State of Pennsylvania** (*hereinafter called the parties of the first part*), and **Wil-**

**liam Flick, of the City of Philadelphia, State of Pennsylvania** (*hereinafter call the party of the second part*).

**Witnesseth**, That the said parties of the first part, for and in consideration of the sum of *one thousand* (\$1,000.00) *dollars*, lawful money of the United States of America, to *them* well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *have* remised, released and quit-claimed, and by these presents *do* remise, release and quit-claim unto the said party of the second part, and to *his heirs* and assigns forever, **All THAT CERTAIN** *lot or piece of ground with the three-story brick messuage or dwelling thereon erected, SITUATE on the east side of "F" Street, at a distance of one hundred three (103') feet northward from the north side of "G" Street, CONTAINING in front or breadth on said "F" Street eighteen (18') feet and extending of that width in length or depth eastward in parallel lines at right angles to the said "G" Street one hundred (100') feet to a three feet wide alley, leading southward into said "G" Street, Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof: And also, all the estate, right, title, interest, property, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold* all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, *his heirs* and assigns forever.

**In witness whereof**, the said parties of the first part *have* hereunto set *their* hands and seals the day and year first above written.

Sealed and delivered in the

presence of us,

Robert Roe,

Oscar Thomas.

Thomas Jones. (Seal.)

Elsie Jones. (Seal.)

**Received**, the day of the date of above Indenture, of the above-named **William Flick**, the *sum of one thousand* (\$1,000.00) *being the full consideration above mentioned.*

*Thomas Jones.*

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss:

On the *ninth* day of *April* Anno Domini 1906, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared the above-named THOMAS JONES and ELSIE, his wife, and in due form of law acknowledged the above indenture to be *their* act and deed and desired the same might be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Robert Roe, (Seal.)

Notary Public.

Commission expires, etc.

#### 243. Short Form of Quit Claim Deed Under Act of April 1, 1909.

THIS DEED, Made the Ninth day of April in the year nineteen hundred and nine (1909), between THOMAS JONES and ELSIE, his Wife, both of the City of Philadelphia, State of Pennsylvania, (hereinafter called the parties of the first part) and WILLIAM FLICK, of the City of Philadelphia, State of Pennsylvania, (hereinafter called the party of the second part): WITNESSETH, That in consideration of One Thousand (\$1,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said parties of the first part do hereby release and quitclaim to the said party of the second part,

ALL THAT CERTAIN lot or piece of ground with the three story brick Messuage or Dwelling thereon erected, SITUATE on the East side of "F" Street at a distance of One Hundred Three (103') feet Northward from the North side of "C" Street CONTAINING in front or breadth on said "F" Street Eighteen (18') feet and extending of that width in length or depth Eastward in parallel lines at right angles to the said "G" Street One Hundred (100') feet to a three feet wide alley, leading Southward into said "G" Street.

IN WITNESS WHEREOF, said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in  
the presence of  
WM. BLINN,  
OSCAR FLINN.

ELSIE JONES. (Seal.)  
THOMAS JONES. (Seal.)

STATE OF PENNSYLVANIA, }  
 COUNTY OF PHILADELPHIA, } ss:

On this Ninth day of April, A. D. 1909, before me, the Subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in Philadelphia, came the above named THOMAS JONES and ELSIE, his Wife, and acknowledged the foregoing deed to be their act and deed, and desired the same to be recorded as such.

WITNESS my hand and Notarial seal, the day and year aforesaid.

WM. BLINN, (Seal.)

*Notary Public.*

*Commission expires, etc.*

#### 244. Deed of Confirmation.\*

KNOW ALL MEN BY THESE PRESENTS, That I, JOHN SMITH, of Philadelphia, in Philadelphia County and State of Pennsylvania, in consideration of the sum of \_\_\_\_\_ Dollars, to me in hand paid by WILLIAM JONES, the receipt whereof is hereby acknowledged, have granted, bargained, sold, ratified, and confirmed and by these presents do grant, bargain, sell, ratify, and confirm, unto the said WILLIAM JONES, his heirs and assigns, forever, all the estate which I have in the messuage, with the appurtenances, in the county aforesaid, now in the possession and occupation of the said WILLIAM JONES. To have and to hold the same unto him, the said WILLIAM JONES, and his heirs and assigns, forever.

IN WITNESS WHEREOF I have hereunto set my hand and seal this day of \_\_\_\_\_, A. D. 19\_\_.

Signed, Sealed and Delivered	}	JOHN SMITH. (Seal.)
in the presence of		
WILLIAM DICK.		
ALEXANDER THOMPSON,		

\*Add usual form of acknowledgment of individual, as in form, Par. 208, page 268. This deed is used to confirm the title already held by the grantee and to convey to him any outstanding interest of claim against his title which may exist by reason of defect in the original conveyance to him, or by defective recording, mistake, etc.

#### 245. Deed of the Right of Way or Other Easement.

THIS INDENTURE, Made the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord One thousand nine hundred and eight, between Adam Brown, of Philadelphia, of the one part, and CHARLES DOE, of Philadelphia aforesaid, of the other part; WIT-

NESSETH, that the said ADAM BROWN, for and in consideration of the sum of One Dollar, lawful money of the United States, unto him well and truly paid by the said CHARLES DOE, at and before the ensembling and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said CHARLES DOE, and to his heirs and assigns, the free and uninterrupted use, liberty, and privilege of, and passage in and along, a certain alley or passage, of            feet in breadth by            feet in depth, extending out of and from Greene Street, in the said city, along the east side of the present messuage, dwelling-house, and lot of the said CHARLES DOE. Together with free ingress, egress, and regress to and for the said CHARLES DOE, his heirs and assigns, his and their tenants and under-tenants, occupiers, or possessors of the said CHARLES DOE's messuage and ground contiguous to the said alley or passage, at all times and seasons for ever hereafter, into, along, upon, and out of the said alley, in common with him, the said ADAM BROWN, his heirs and assigns, tenants or occupiers of the said ADAM BROWN's messuage and ground, adjacent to the said alley. To have and to hold all and singular the privileges aforesaid to him, the said CHARLES DOE, his heirs and assigns, to the only proper use and behoof of him, the said CHARLES DOE, his heirs and assigns, forever, in common with him, the said ADAM BROWN, his heirs and assigns, as aforesaid; subject, nevertheless, to the moiety or equal half part of all necessary charges and expenses which shall from time to time accrue in paving, amending, repairing, and cleansing the said alley.

IN WITNESS WHEREOF, We have hereunto set our hands and seals the day and year first above written.

Signed, Sealed and Delivered	}	
in the presence of		ADAM BROWN. (Seal.)
ANDREW SMITH,		_____ (Seal.)
ALLEN DICK.		

If the grantor is married, his wife should also join in the deed.

Add acknowledgment as in case of regular deed, form, Par. 208, page 268.

#### 246. Deed of Exchange of Lands.\*

THIS INDENTURE, Made the Twenty-first day of January, A. D. One thousand nine hundred and twelve (1912) between JOHN

\*This is a form of deed of exchange in which the grant is made by the respective parties in the same instrument. Very often in modern real

BLACK, of Philadelphia, of the one part, and JAMES SMITH, of Philadelphia, of the other part; Witnesseth, that the said JOHN BLACK hath given and granted, and by these presents doth give and grant, unto the said JAMES SMITH;—ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected, being premises No. 3122 “X” Street in the City of Philadelphia, and being more particularly described as follows, to wit, SITUATE (here describe premises in full) for and in exchange of ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected belonging to the said JAMES SMITH being known as premises No. 325 “M” Street in the City of Philadelphia and more particularly described as follows, to wit, SITUATE (here describe premises in full). To have and to hold said premises No. 3122 “X” Street with the appurtenances to the said JAMES SMITH, his heirs and assigns forever, for and in exchange of premises No. 325 “M” Street with the appurtenances. And the said JOHN BLACK doth covenant, &c., (here add such covenants as may be agreed upon).

And the said JAMES SMITH hath likewise on his part given and granted, and by these presents doth fully, freely, and absolutely give and grant, unto the said JOHN BLACK, his heirs and assigns, premises No. 325 “M” Street as described aforesaid with the appurtenances. To have and to hold said premises 325 “M” Street and hereditaments, &c., to the said JOHN BLACK, his heirs and assigns forever and in exchange of and for premises No. 3125 “X” Street aforesaid. Provided always, nevertheless, and these presents are upon this condition, and it is the true intent and meaning of the parties to these presents, their executors, administrators, or assigns, shall, at any times hereafter during the said respective terms above granted, by color or means of any former or other gift, grant, or sale, or otherwise howsoever, be ousted or evicted of and from the possession of either of the said messuages or tenements, and other the premises, so respectively granted in exchange as aforesaid, or any part thereof, then and in such cases these presents, and every matter and thing herein contained, shall be utterly void and of none effect, and then and thenceforth it shall and may be lawful to and for the party or

estate practice separate deeds are used; in other words, James Smith would make a deed granting his property to John Black and John Black a separate deed granting his property to James Smith. In such case the ordinary deed form for individual (see form, page 64) may be used.

parties so ousted or evicted into his or their said former messuage or tenement and premises, with all and singular the appurtenances, to re-enter, and the same to have again, repossess, and enjoy, as of his and their former estate or estates, anything herein contained to the contrary thereto in any wise notwithstanding.

IN WITNESS WHEREOF, The said parties have hereunto set their hands and seals, the day and year aforesaid.

Signed, Sealed, and Delivered	}		
in the presence of		JOHN BLACK.	(Seal.)
ROBERT ROE,		JAMES SMITH.	(Seal.)
JOHN DOE.			

STATE OF PENNSYLVANIA,	}	ss:
COUNTY OF PHILADELPHIA,		

On the Twenty-first day of January, A. D. 1912, before me the subscriber a notary public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared the above named JOHN BLACK and JAMES SMITH who in due form of law acknowledged the foregoing indenture to be their and each of their act and deed to the intent that the same might be recorded as such.

WITNESS my hand and Notarial seal the day and year aforesaid.

JOHN DOE,  
Notary Public.

Commission expires First day of July, 1913.

#### 247. Ground Rent Deed.

See form, paragraph No. 105, page 142.

#### 248. Lease for Property in City (All Waivers).

THIS AGREEMENT WITNESSETH, That ROBERT STONE, *Agt. for Allen Smith*, hereinafter called the Lessor, does hereby let unto WILLIAM SLOAN, hereinafter called the Lessee *Premises No. 1321 X Street in the City of Philadelphia* to be used as *dwelling house* and for no other purpose, for the term of *one year* to begin on the *Twelfth* day of *February*, 1912, at the rent of *FOUR HUNDRED AND EIGHTY (\$480)* dollars per *annum* payable in equal *monthly* payments of *Forty (\$40)* dollars in advance on the *Twelfth* day of *each month* at 102 W. St. or at such other place



within Philadelphia as said lessor may in writing from time to time direct; and the said Lessee accepts possession of the said premises upon the said terms, and further agrees to the following covenants, stipulations and conditions:

1st. Lessee will pay the said specified rent, at the times and in the manner above provided, and all damages, costs and charges in this lease provided for, and in case of non-payment of said rent, damages, costs and charges, if any, or in case the leased premises shall be deserted or vacated, Lessor may enter the same, either by force or otherwise, without being liable to any prosecution or action therefor, and may distrain not only for the specific rent above mentioned, but also for all damages, costs, and charges in this lease mentioned and provided for with the same force and effect as if the same were a distress for rent in arrear, and also relet the same premises, as agent of Lessee, for any unexpired portion of the term and receive the rent therefor. If Lessee shall, at any time during the continuance of this lease attempt to remove or manifest an intention to remove the goods and chattels out of or from said premises or desert or vacate said premises without having paid and satisfied the said Lessor in full for all rent which shall become due during the term of this lease, or any continuation thereof, or if said Lessee becomes embarrassed or makes an assignment for the benefit of creditors, or is sold out by any sale under process of law, then in such cases the whole rent for the whole term of this lease, or any continuation thereof, shall be taken to be due and payable forthwith, and the said Lessor may proceed to distrain for and collect the whole in the same manner as if, by the conditions of this lease, the rent for the whole term, or any continuation thereof, were payable in advance, any law, usage or custom to the contrary notwithstanding. Lessee also agrees that all property on the said premises shall be liable to distress for rent, and for said damages, costs and charges, and for all costs of distress, watchmen's wages and constables' commissions, including such as may, by Act of Assembly, be chargeable to Lessor; and in case any goods shall have been removed from the leased premises, Lessor may follow, take and return said goods to the leased premises, or distrain on and sell the same wherever found. Lessee hereby waiving the benefit of all laws made or to be made exempting property from levy and sale, either on distress for said rent, dam-

ages, costs, and charges, or on a judgment for said rent, damages, costs and charges, or for breach of any other of the conditions herein contained.

2d. Lessee shall not use, or allow to be used, the said premises for any purpose other than above mentioned, nor assign the said lease, nor underlet the said premises, or any part thereof, without the written consent of Lessor endorsed hereon. This covenant shall apply as well to an involuntary transfer by operation of law, whether by execution, insolvency or bankruptcy, as to a voluntary assignment or underletting.

3d. Lessee will, during the term remove or caused to be removed from said premises any and all ashes, rubbish or refuse matter and keep, and at the expiration thereof deliver up, the said premises in as good order and condition as the same now are, reasonable wear and tear, and damage by fire or other casualty, not occurring through Lessee's negligence, excepted, Lessee shall not make any alterations additions, or improvements without Lessor's written consent endorsed hereon, and all alterations, additions or improvements made by either of the parties hereto upon the premises, shall be the property of Lessor, and shall remain upon, and be surrendered with, the premises at the termination of this lease, without molestation or injury.

4th. Unless either party hereto shall give to the other written notice for removal at least *Three months* prior to the end of said term, this lease shall continue, upon the terms and conditions then in force, for a further period of *One year* and so on from year to year until terminated by either party hereto giving to the other at least *three months* written notice for removal prior to the expiration of the then current term; *Provided*, however, that if Lessor shall have given *three months* written notice, to be served by leaving the same on demised premises previous to the expiration of said term, or of any subsequent term created under the provisions hereof, of Lessor's intention to change the terms and conditions of this lease, and Lessee shall hold over at the end of the then current term after such notice, Lessee shall be considered a tenant under the terms, remedies and conditions of this lease as modified by such notice for a further period of *one year* and thereafter, from year to year until terminated as hereinabove provided, with the same effect as if a new lease in such form had been duly executed.

5th. It is further agreed that if the said rent shall at any time be in arrear and unpaid, or if Lessee shall fail to comply with any other of the covenants, terms or conditions of this lease during the said term, or any subsequent term, or with any notice given under the terms hereof this lease may, at the option of Lessor, be forthwith terminated, and thereupon any Attorney may immediately thereafter, as Attorney for Lessee, at the request of Lessor sign an agreement for entering in any competent court an amicable action and judgment in ejectment to any term then past or present (without any stay of execution or appeal) against Lessee, and all persons claiming under Lessee for the recovery by Lessor of possession of the hereby demised premises, and for all arrearages of rent, if any, without any liability on the part of the said Attorney, for which this shall be a sufficient warrant; and thereupon a writ of habere facias possessionem, with a clause of fieri facias for such arrearages of rent, if any may issue forthwith, without any prior writ or proceeding whatsoever, and Lessee hereby releases to Lessor all errors and defects whatsoever in entering such action on judgment, or causing such writ of habere facias possessionem to be issued, or in any proceeding thereon or concerning the same; and hereby agrees that no writ of error or objection or exception shall be made or taken thereto; and a copy of this lease, with any modifications thereof, being filed in said action, it shall not be necessary to file the original as a warrant of Attorney, any law or rule of court to the contrary notwithstanding. No such determination of this lease, nor taking or recovering possession of the premises, shall deprive Lessor of any other action against Lessee for possession, for rent, or for damages, nor shall any distress or suit for rent or damages prevent Lessor from proceeding to recover possession on a breach of any of the terms or conditions hereof.

6th. It is hereby further agreed that if Lessor should for any cause be unable to deliver possession of said premises to Lessee at the beginning of the term of this lease or within ten days thereafter, Lessor shall not be liable therefor in damages to Lessee, and upon Lessor's being unable to deliver possession before the expiration of said ten days, this lease may at the option of Lessee be forthwith terminated.

All rights, remedies and liabilities herein given to, or imposed upon, either of the parties hereto shall extend to the heirs, executors, administrators, successors, and, so far as this lease and the term thereby created is assignable by the terms hereof, to the assigns of such party.

IN WITNESS WHEREOF, The parties hereto have hereunto set their hands and seals this *Eleventh* day of *February* 1912.

SEALED AND DELIVERED	{	<i>Robert Stone,</i> (Seal.)
in presence of		<i>Agent for Allen Smith.</i>
<i>A. B.</i>		<i>William Sloan.</i> (Seal.)

I hereby agree to be responsible to the said Lessors, or their assigns, for the true and faithful performance of the above contract, and very renewal thereof, on the part of the said Lessee , without recouse to said Lessee being first required.

WITNESS my hand and seal the *Eleventh* day of *February*, A. D. 1912.

SEALED AND DELIVERED	{	
in presence of		<i>Herman S. Schmidt.</i> (Seal.)
<i>A. B.</i>		

#### 249. Another Form of Lease.

THIS AGREEMENT, Made this *first* day of *September*, A. D. 1912, between *A. B.* of the first part and *C. D.* of the second part.

WITNESSETH, That the said party, in consideration of the rents and covenants hereinafter mentioned, does demise and lease unto the said second party to be used as a *Grocery Store* the premises situate in the *City of Reading*, County of *Berks* and State of *Pennsylvania*, described as follows: *No. 2342 M. Street.*

TO HAVE AND TO HOLD unto the said second party, subject to the conditions of this agreement for the term beginning on the *first* day of *September*, 1912, and ending on the *first* day of *September*, 1913.

IN CONSIDERATION OF WHICH the said second party agrees that he will pay to the said first party for the use of said premises, the sum of *Three Hundred and Sixty* Dollars, payable as follows viz: *Thirty dollars on the first day of each and every month in advance* and the said second party also agrees that he will keep said premises in as good repair and condition as at present and will at the expiration of this lease, surrender up same in like repair and condition, natural wear and damage by

the elements excepted; that *he* will permit no unlawful business to be carried on upon said premises or permit anything to be done contrary to the conditions of the policies of insurance on said premises whereby the hazard might be increased or the insurance invalidated; that *he* will not underlet said premises, nor assign this lease or any interest therein to any person without the written consent of the said first party; that *he* will not remove from said premises during the term of this lease without the written consent of the said first party and in case of removal, or attempt to remove, the entire rent reserved for the full term of this lease shall become due and payable at once and may forthwith be collected by distress or otherwise.

That *he* will keep the said premises in a clean and sanitary condition and remove all ashes or other garbage which may accumulate upon the same during the said term or failing therein pay to the said first party double the cost of removing the same to be recovered the same as rent due and in arrears; that *he* will pay the rent for the use of water and lights upon the said premises during the said term and which may be recovered by said first party as rent due and in arrears; and the said first party reserves the right to display a "for rent or sale" card upon the said premises and to enter the premises for the purpose of making necessary repairs, or to show the same to prospective purchasers or lessees.

And any goods removed from said premises, either before or after the expiration of the said term, while any portion of the said rent remains unpaid, whether due or not, shall remain liable to distress for such rent for the period of thirty days after such removal, the same as though they remained upon the premises; and any removal of the goods from the said premises at any time, either by day or by night, without the written consent of the said first party, shall be considered a clandestine and fraudulent removal. And if default shall be made in the payment of any part of said rent for five days after the same becomes due, or if the second party shall break or evade, or attempt to break or evade, any of the covenants, agreements and conditions of this lease, the first party may forfeit and annul the unexpired portion of this lease and enter upon and repossess the said premises without process of law and without any notice whatsoever.

And it is further agreed that the acceptance by said first party of any of the said rent at any time after the same has become due,

or default has been made in the payment thereof or any failure of the first party to enforce any of his rights under this lease or any of the penalties, forfeitures or conditions herein contained, shall not in any wise be considered a waiver of his right to enforce the same and that he may enforce such forfeiture without any notice whatsoever, and that any attempt to collect the rent by one proceeding shall not be considered as a waiver of the right of said first party to collect the same by any other proceeding.

And the said second party hereby waives the usual three months' notice to quit, and agrees to surrender said premises at the expiration of said term, or the termination of this lease without any notice whatsoever. And upon any proceeding instituted for the recovery of said rent, either by distress or otherwise, the said second party waives the benefit of all appraisement, stay and exemption laws, the right of inquisition on real estate, and all bankrupt or insolvent laws now in force or hereafter passed.

If default shall be made in the payment of any rent when the same shall become due or if the second party shall permit any judgment to be entered against him or make an assignment for the benefit of creditors, or commit any other Act of Bankruptcy, the rent for the full term shall become immediately due and collectible by distress or otherwise.

And the said second party hereby confess judgment in favor of the said first party for the whole amount of the rent at any time remaining unpaid, whether the same shall have been due or not, waiving stay of execution, inquisition and all exemption laws and five per cent. to be added as attorney's commission for collection.

And the said second party does hereby, upon the breach of any of the conditions of this lease, authorize any attorney of any Court of Record to appear for *him* and enter an amicable action of ejectment and confess a judgment of ejectment therein for the premises herein described and do authorize the immediate issuing and execution of a writ of habere facias possessionem with clauses of fieri facias for costs, without asking leave of court.

It is further agreed that if the said second party (with the consent of the first party) shall continue in possession of the said premises after the expiration of said term, then this agreement shall become immediately operative for another like term and the first party shall have the right to enforce any of the conditions or

forfeitures of this agreement, including the confession of judgment, with the waivers, etc., as if a new agreement identical with this had been executed by the said parties for said succeeding term or terms.

IN WITNESS WHEREOF, The parties aforesaid have hereunto set their hands and seals the day and year first above written.

X. Y.

A. B. (Seal.)

R. T.

C. D. (Seal.)

#### 250. Farm Lease.

THIS AGREEMENT WITNESSETH, That Benjamin Reagel, of Carlisle, Pa., doth hereby let and demise unto Daniel Roberts, for the term of one year from the first day of April, A. D., nineteen hundred twelve, at the rent of six hundred dollars per annum, to be paid quarterly in advance by the lessee at 521 Main Street, Carlisle, Pa., or at such place as the lessor or subsequent owner may require; the first quarterly payment thereof to be made on the first day of April, nineteen hundred twelve, which said rent the said lessee doth hereby agree to pay to the said lessor on the days and times aforesaid, and that he shall not nor will assign this lease nor underlet said premises, or any part thereof, or use or occupy the same other than as a farm, without the written consent of the said lessor first had and obtained, and shall and will during the said term keep, and at the termination thereof deliver up, the said premises in as good order and repair as they are now in, reasonable wear and tear and casualties which may happen by fire or otherwise only excepted. The lessee agrees as follows, viz: That he will use on the said premises all the hay, straw and fodder which shall be grown thereon; that he will not sell, assign, pledge, remove or cause or suffer to be removed any of the dung, manure or compost made or which shall be on said premises, and that he will use and spread the same thereon at proper times and places for the nourishment thereof, and that upon the termination of this lease or any subsequent letting thereunder he will leave upon the said premises any remaining hay, straw, fodder or manure, which shall then become the property of the lessor; that he will not convert into tillage or garden ground any of the pasture or meadow ground; that he will not mow any of the meadow or pasture ground more than once in any one year; that he will not cut down or use any of

the trees upon the said premises; that he will mow or keep down in the usual manner, thistles, docks, and other seeding weeds; that he will keep the fences in good repair, the lessor furnishing such materials for the purpose as he may think necessary; that he will cultivate the said farm with respect to crops and in every respect according to the usual course and custom of good husbandry, sowing winter grain with a sufficient quantity of timothy and clover seed. And if the rent shall remain unpaid on any day on which the same ought to be paid, then the lessor may enter the premises, and proceed by distress and sale of the goods there found, to levy the rent and all costs and officer's commissions. The said lessee further agrees that all goods on the said premises, and for thirty days after removal shall be liable to distress for rent and hereby waives the benefit of all exemption laws in relation thereto or to any execution. And it is hereby mutually agreed, that either party hereto may determine this lease at the end of the said term, by giving the other notice thereof, at least three months prior thereto, but in default of such notice, this lease shall continue upon the same terms and conditions as are herein contained, for a further period of one year and so on from year to year or until terminated by either hereto giving to the other three months' written notice for removal previous to the expiration of the second or any succeeding or extended term under this lease, express or implied. And it is further agreed, that if the lessee shall die or if there shall be any involuntary assignment of this lease by law or otherwise, or if the said rent shall at any time be in arrear and unpaid, or if the said lessee shall underlet or otherwise use the said premises than as above expressed, or shall fail to comply with the conditions of this lease or shall not well and truly perform and fulfill all and every the covenants and agreements herein contained on the part of the lessee to be performed and kept then this lease shall, at the option of the said lessor, cease and absolutely determine, and any attorney may immediately thereafter, as attorney for the said lessee, at the sole request of the said lessor, sign an agreement for entering in any competent court, an amicable action and judgment in ejectment (without any stay of execution or appeal) against the said lessee and all persons claiming under said lessee for the recovery by the lessor of possession of the hereby demised premises, without any liability on the part of the said attorney, for which this shall be a sufficient warrant; and thereupon a



writ of habere facias possessionem may issue forthwith without any prior writ or proceeding whatsoever, and the lessee hereby releases to the lessor all errors and defects whatsoever in entering such action or judgment, or causing such writ of habere facias possessionem to be issued, or in any proceeding thereon, or concerning the same; and hereby agree that no writ of error or objection or exception shall be made or taken thereto; and a copy of this lease verified by affidavit, being filed in said action, it shall not be necessary to file the original as a warrant of attorney, any law or rule of court to the contrary notwithstanding. No such determination of this lease, nor taking or recovering possession of the premises, shall deprive the lessor of any other action against the lessee for possession for rent or for damages.

It is mutually agreed that this lease shall extend and apply to and bind the respective heirs, assignees, devisees, executors and administrators of the lessor and lessee and all covenants, agreements, conditions and provisions herein shall apply to and bind the owner of the lease or demised premises as if the same ran with the land or as if they were original parties and the lessee agrees that no objection shall be made to the said ejectment proceedings by reason of rent not having been demanded or collected when due or by any waiver.

In witness whereof, the said parties have hereunto set their hands and seals, this first day of February, one thousand nine hundred twelve.

Sealed and delivered in the	}	
presence of		BENJ. REAGEL. (Seal.)
WILLIAM LINN.		DANIEL ROBERTS. (Seal.)
CHARLES ZIMMERMAN.		

#### 251. Farm Lease on Shares.

THIS AGREEMENT WITNESSETH, That Frank Boeliva doth hereby let and demise unto Frederick Herman, (here describe farm with buildings), for the term of one year from the first day of April, A. D. nineteen hundred twelve; the said Frederick Herman to yield and pay unto the said Frank Boeliva one-half part of all the grain which shall be raised or grown upon the said premises, and which letting is to be according to the following agreements:

The said Frederick Herman shall plant crops and cultivate the farm as follows (state how fields are to be planted; what

crops are to be sown ; how much winter grain, etc.). Each party is to find and pay for one-half the seeds for crops. The said Frederick Herman is to find and pay for all farming implements, all the working stock, all the necessary labor and all the other expenses in working and cultivating the farm and is to work the farm diligently in a husband-like manner. The said Frederick Herman is to have the right to keep and feed not more than

horned cattle and

horses ;

the products of the dairy and garden products are to be for the exclusive use and benefit of the said Frederick Herman. The manure, hay, straw and corn which shall be grown upon the premises and all manure made thereon shall belong solely to the said Frank Boeliva, but the same shall be used on the farm for its nourishment, but any part thereof which shall not have been so used shall belong to the said Frank Boeliva. The said Frank Boeliva shall have the right to store in the farm buildings his share of the crops, and the said Frank Boeliva reserves the right of entering and visiting the said farm and the farm buildings, to inspect the farming operations, receive, take care of and dispose of his share of the grain. The said Frederick Herman shall keep the fences up and in good order and repair at his own expense ; keep down the weeds and preserve all trees and timber. It is agreed that there shall not be any partnership between the parties hereto ; and it is hereby mutually agreed that the said Frank Boeliva shall have the ownership of one-half part of all the grain sowed when in the ground and until it shall be divided and that all crops shall be cut and harvested in due season by the said Frederick Herman, and that there shall be a division between the said Frank Boeliva and Frederick Herman of their shares of the grain upon such harvesting. And the said lessee doth hereby agree to pay the said rent to the said lessor and deliver to him his share of the said grain at the time aforesaid, at or in said barn or at such other place, within said

as said lessor may in writing from time to time direct, without demand being made therefor, and that he will not assign this lease nor underlet the said premises, or any part thereof, or use or occupy the same other than as a farm without the written consent of the said lessor first had and obtained, and during the said term will keep said premises in good condition, order and repair, and at the termination of said term will deliver up the said premises in as good condition, order and repair as the same

now are, reasonable wear and tear and casualties which may happen by fire or otherwise excepted. And the said lessee further agrees that if the rent shall remain unpaid on any day on which the same ought to be paid, then the lessor may enter the premises and proceed, by distress and sale of the goods there found, to levy the rent and all costs and officer's commissions. The said lessee further agrees that all goods on the said premises, and for thirty days after removal, shall be liable to distress for rent and hereby waives the benefit of all exemption laws in relation thereto. And said lessee further agrees that this waiver shall extend and be applicable to any process, execution or executions that may be issued in any and all suits, actions or proceedings, for the collection of rent due and in arrear, and for damages for the nonfulfilment of any of the covenants herein contained. And it is further agreed, that if the said rent or grain shall at any time be in arrear and unpaid or undelivered, or if the said lessee shall underlet said premises or any part thereof, or assign this lease, or in case of an assignment of the lease by operation of the law, or if he shall use the said premises otherwise than as above expressed and provided, or shall not well and truly perform and fulfil all and every the covenants and agreements herein contained on the part of the lessee to be performed and kept, or in case the lessee shall die; or in case of a levy by execution on the lessee's right or interest in the crops, then this lease shall, at the option of the said lessor, cease and absolutely determine, and any attorney may immediately thereafter, as attorney for the said lessee, at the sole request of the said lessor, sign an agreement for entering in any competent court, an amicable action and judgment in ejectment (without any stay of execution or appeal) against the said lessee and all persons claiming under said lessee for the recovery by the said lessor of possession of the hereby demised premises, without any liability on the part of the said attorney, for which this shall be a sufficient warrant; and thereupon a writ of habere facias possessionem may issue forthwith without any prior writ or proceeding whatsoever, and the lessee hereby releases to the lessor all errors and defects whatsoever in entering such action or judgment, or causing such writ of habere facias possessionem to be issued, or in any proceedings thereon, or concerning the same; and hereby agrees that no writ of error or objection or exception shall be made or taken thereto; and a copy of this lease verified

by affidavit, being filed in said action, it shall not be necessary to file the original as a warrant of attorney, any law or rule of court to the contrary notwithstanding. No such determination of this lease, nor taking or recovering possession of the premises, shall deprive the lessor of any other action against the lessee for possession, rent, grain or damages. All rights and liabilities herein given to or imposed upon either of the parties hereto, shall extend to the heirs, executors, administrators, successors and assigns of such party.

In witness whereof, the said parties have hereunto set their hands and seals this first day of March, one thousand nine hundred twelve.

Sealed and delivered in the presence of	}	FRANK BOELIVA. (Seal.)
LOUIS SCHMIDT.		FREDERICK HERMAN. (Seal.)
OTTO KRAMER.		

**252. Letter or Power of Attorney Appointing a Person Attorney in Fact to Act for and Execute Instruments for the Principal.**

KNOW ALL MEN BY THESE PRESENTS, That I, JOHN JONES, of the City of Philadelphia, merchant, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, JAMES BLACK, of Philadelphia, my true and lawful attorney, for me, and in my name, place and stead, to enter into and take possession of all messuages, lands, tenements, hereditaments, and real estate whatever, in (here describe the lands,), to or in which I am now possessed, seised or am or in any way entitled or interested; and to grant, bargain, and sell the same, or any part or parcel thereof, for such sum or price and on such terms as to him shall seem meet; and for me and in my name to make, execute, acknowledge, and deliver good and sufficient deeds and conveyances for the same, either with or without covenants and warranty; and, to let and demise the said real estate for the best rent that can be procured for the same; and to ask, demand, recover, and to receive all sums of money which shall become due and owing to me by means of such bargain, sale, or lease, and to take all lawful ways and means for the recovery thereof; to compound and agree for the same, and to execute and deliver sufficient discharges and acquittances therefor. (If it is desired

to permit the attorney to substitute another to act in his absence, insert also this clause: With power to substitute one or more attorney or attorneys under him in or concerning the premises or any part thereof, and the same at his pleasure to revoke.) Giving and granting unto my said attorney (or his substitute or substitutes) full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present; hereby ratifying and confirming all that my said attorney (or his substitute or substitutes) shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this first day of July, in the year of our Lord one thousand nine hundred and eight.

Signed, sealed and delivered in the presence of WILLIAM BLINN. OSCAR FLINN.	}	JOHN JONES. (Seal.)
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It is advisable to record such letter of attorney and in order to do so see that it is acknowledged. The form of acknowledgment may be as follows:—

STATE OF PENNSYLVANIA, COUNTY OF PHILADELPHIA,	}	ss:
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Before me the subscriber, a notary public of the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared JOHN JONES, who in due form of law acknowledged the foregoing to be his act and deed to the intent that the same might be recorded as such.

WILLIAM BLINN,  
*Notary Public.*

A power of attorney need not be acknowledged before a notary public to make it valid. But if it is desired to record it, it must be acknowledged.

### 253. Letter of Substitution.

Where the attorney of fact is given power to substitute another to avail himself of this substitution he should execute the following general letter of substitution.

## GENERAL LETTER OF SUBSTITUTION.

To all persons to whom these presents shall come, greeting:  
 WHEREAS, JOHN JONES, of the City of Philadelphia, State of Pennsylvania, merchant, in and by a certain instrument of writing or letter of attorney, bearing date the first day of July, in the year of our Lord one thousand nine hundred and eight, did make, constitute and appoint JAMES BLACK, to, &c., (as in the original power), as in and by the said letter of attorney, which is hereunto annexed (or, recorded, &c.), relation being thereto had, appears: Now know ye, that I, the said JAMES BLACK, have made, appointed and substituted, and by these presents, by virtue of the power and authority given to me by the said-recited letter of attorney, do make, appoint and substitute JOHN JACOBS, of the City of Philadelphia, State of Pennsylvania, to be the true and lawful attorney of the said JOHN JONES, the constituent in the foregoing letter of attorney named, to do, execute and perform all such acts, deeds, matters and things, as shall and may be requisite and necessary to be done and performed for effecting the purposes and objects in the said letter of attorney contained, as fully and effectually, in all respects and to all intents and purposes, as I myself might or could do, in virtue of the power and authority aforesaid, if personally present; hereby ratifying and confirming all and whatsoever my said substitute may lawfully do by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this second day of September, in the year of our Lord one thousand nine hundred and eight.

Signed, sealed and delivered in  
 the presence of  
     WILLIAM BLINN.  
     OSCAR FLINN.

JOHN JONES. (Seal.)

STATE OF PENNSYLVANIA,  
 COUNTY OF PHILADELPHIA, } ss:

Before me the subscriber, a notary public of the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared JOHN JONES, who in due form of law acknowledged the

foregoing to be his act and deed to the intent that the same might be recorded as such.

WILLIAM BLINN,  
*Notary Public.*

Commission expires, etc.

See note to form, Par. 252, page 339, as to necessity for acknowledgment.

**254. Letter or Power of Attorney to Satisfy Mortgage.**

I, JOHN BROWN, assignee of RICHARD SMITH, the mortgagee named in a certain indenture of mortgage executed and given by SIMON LARGE, to secure the payment of two thousand dollars, with interest, which mortgage is dated the first day of April, 1904, and recorded in the recorder's office of Bucks county, in Mortgage Book No. 98, page 65, and the assignment whereof is recorded in the same office in Mortgage Book No. 300, page 265, do hereby acknowledge that I have received payment of the full amount due upon and secured by said mortgage; and I do hereby appoint and authorize JOHN L. JONES, ESQ., as my attorney, to enter satisfaction upon the record thereof as effectually as I could do if personally present.

WITNESS my hand and seal the 12 day of May, A. D. 1910.

Witnesses:

C. D. }

A. B. }

JOHN BROWN. (Seal.)

**255. Revocation of Letter of Power of Attorney.**

To all persons to whom these presents shall come, I, M. J., of Philadelphia, send greeting: Whereas I, the said M. J., did heretofore, by a certain instrument in writing or letter of attorney, empower I. C., of Philadelphia, to be my attorney, in my name and for my use, to recover and receive all such money's, debts and effects whatsoever, as were due, owing or payable unto me by, &c., (as in the power); and to do all other matters and things, as fully as I myself might or could do, for that purpose, &c., or to that or the like effect, as by the same writing, relation being thereunto had, at large appears: Now know ye, that I, the said M. J., for divers good causes, and valuable considerations me thereunto moving, have revoked, recalled, countermanded, and made void, and by all these presents do revoke, recall, countermand and to all intents and purposes make null, void and of none

effect, the said recited writing or letter of attorney, and all powers and authorities therein and thereby given and granted, and all other matters and things therein or in any of them contained; and all acts, matters and things whatsoever which shall or may be acted, done or performed by virtue or means thereof in any manner whatsoever. (If another attorney is appointed, continue as follows:—"And further know ye, that I, the said M. J., do by these presents make, name, constitute and appoint, and in my place and stead put and depute, J. M., of Philadelphia, to be my true and lawful attorney, for me and in my name, &c.," as in the form of letter of attorney desired.)

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this first day of October, in the year of our Lord one thousand nine hundred and three.

Signed, sealed and delivered in  
the presence of  
W. S. L.  
M. J. P. }

M. J. (Seal.)

**256. Sci. Fa. Mortgage, Bond and Warrant (Usual Form).**

See form of mortgage, Par. 77, page 96.

See form of bond and warrant, Par. 80, page 104.

**257. Building and Loan Association Mortgage and Bond and Warrant.**

See form of mortgage and bond, Par. 94, page 119.

**258. Form of Corporation Sci. Fa. Mortgage.**

The corporation sci. fa. mortgage is similar in form to the ordinary mortgage of individual to individual. See form, page 96. Use form referred to, except add the words "successors and assigns" to the name of the corporation instead of "heirs and assigns." Take care also where the mortgage is made by a corporation to use the corporation form of acknowledgment. See form Par. 211, page 269.

**259. Form of Corporation Mortgage to Trustee to Secure Bond Issue.**

A corporation mortgage or a deed of trust to secure a bond issue should set forth and recite in detail the authorization and consent of the stockholders. It should also set forth a form of the bond and certificate to trustee.



The following is full and complete form and is taken from Eastman on Corporations, Vol. II (2d Ed.), page 1472:

CORPORATION MORTGAGE OR DEED OF TRUST.

This Mortgage, or Deed of Trust, dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand nine hundred and \_\_\_\_\_, and executed by and between the \_\_\_\_\_, a corporation under the laws of Pennsylvania, having its principal office in the \_\_\_\_\_, Pennsylvania, (hereinafter called "The \_\_\_\_\_ Company,") party of the first part, and the \_\_\_\_\_ Trust Company, also a corporation under the laws of Pennsylvania, having its principal office in the \_\_\_\_\_, Pennsylvania, as trustee (hereinafter called "trustee,") party of the second part,

WITNESSETH:

Whereas, The \_\_\_\_\_ Company is a corporation duly organized and existing under and by virtue of the act of assembly of the Commonwealth of Pennsylvania, entitled "\_\_\_\_\_, " and the supplements thereto, with an authorized capital stock of \_\_\_\_\_ dollars, consisting of \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each;

And Whereas, Under the laws of Pennsylvania, the \_\_\_\_\_ company is authorized and empowered to increase its indebtedness to such amount as it shall deem necessary to accomplish, carry on and enlarge its business and purposes, and to secure the payment of the principal and interest thereon by a mortgage, or deed of trust, or other pledge of all or any part, or parts, of its real and personal property, rights, privileges and franchises, in such manner and upon such terms as its board of directors may determine, provided that a majority of the stockholders shall consent to such increase at a meeting duly convened to take action in relation thereto;

And Whereas, The board of directors of the \_\_\_\_\_ Company, at a meeting duly convened and held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by a resolution duly adopted by the affirmative votes of all the members of said board, resolved that the \_\_\_\_\_ company deemed it necessary, in order to accomplish and carry on and enlarge its business and purposes, that its indebtedness should be increased in the aggregate to the amount of \_\_\_\_\_ dollars, and declared its purpose to au-

thorize such increase, and directed that the question of such proposed increase of indebtedness should be submitted to the stockholders for their approval;

And Whereas, At a meeting of the stockholders of the company, duly convened and held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the chief office of the \_\_\_\_\_ company, sixty days prior notice of the holding of which meeting having been waived by all the stockholders of the \_\_\_\_\_ company, and all of the stockholders of the \_\_\_\_\_ company being present in person or by proxy, the said stockholders, in the manner required by law did consent to the increase of the indebtedness of the \_\_\_\_\_ company from \_\_\_\_\_ to \_\_\_\_\_, as will more fully appear by reference to the election return filed in the office of the secretary of the commonwealth, at Harrisburg, Pennsylvania;

And Whereas, The board of directors of the company, at a meeting duly convened and held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, unanimously resolved to make an issue of \_\_\_\_\_ bonds of the denomination \_\_\_\_\_ dollars, each, payable \_\_\_\_\_ years after date, in gold coin of the United States, of the present standard of weight and fineness, with interest thereon, payable semi-annually, in like gold coin, at the rate of \_\_\_\_\_ per cent. ( \_\_\_\_\_ %) per annum, and that the said bonds should be free from tax, and should be executed under the corporate seal of this company, and signed by the president, and attested by its secretary, and that interest coupons authenticated by a lithographed fac simile of the signature of the treasurer of this company, should be attached to said bonds, covering the semi-annual installments of interest thereon and evidencing the obligation to pay the same, and that the said bonds, interest coupons, and trustee's certificate upon said bonds should be of substantially the following form:

(FORM OF BOND.)

United States of America.

State of Pennsylvania.

First mortgage and collateral trust  
year gold bond.

Company..  
per cent.

No. \_\_\_\_\_ \$ \_\_\_\_\_

The \_\_\_\_\_ company, a corporation under the laws of Pennsylvania, for value received, promises to pay to the bearer, or, if registered, to the registered holder hereof, at the office of the \_\_\_\_\_ trust company, in the city of \_\_\_\_\_, Pennsylvania, (\$ \_\_\_\_\_) dollars, in gold coin of the United States of America, of, or equivalent to, the present standard of weight and fineness, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, and to pay interest thereon semi-annually, at the rate of \_\_\_\_\_ per cent. ( \_\_\_\_\_ %) per annum, payable in like gold coin, at the same place, on the first days of \_\_\_\_\_ and \_\_\_\_\_ of each year, on the presentation and surrender of the interest coupons hereto annexed, as they severally mature; and the maker hereof further agrees that this bond, and the principal and interest thereof, shall be free from tax, and that every installment of the interest and the principal thereof shall be paid in full, without any deduction for any taxes, or charges in the nature thereof, that shall be payable on this bond, or the principal or interest thereof, or that shall be required to be retained therefrom.

This bond is one of an authorized issue of \_\_\_\_\_ bonds, all of like date, tenor and amount, and numbered consecutively from one (1) to \_\_\_\_\_ (\_\_\_\_), inclusive of both numbers, and the payment of all of said bonds, and the interest thereon, is equally and ratably secured, without any preference, priority or discrimination, and without regard to the actual time of issue thereof, by a first mortgage, or deed of trust, duly executed and delivered by the maker hereof to the \_\_\_\_\_ trust company, of \_\_\_\_\_, trustee, upon the property, real and personal, and franchises, now or hereafter belonging to the maker hereof, and by a collateral trust pledge, under said mortgage, or deed of trust, of \_\_\_\_\_; and all of said bonds are made and issued subject to the provisions of said mortgage, or deed of trust, and reference is made thereto with like effect as if the same were herein fully set forth.

This bond shall pass by delivery, unless registered in the owner's name, and such registry noted on the bond by the company's registrar, after which no transfer shall be valid unless made on the company's books by the registered owner and similarly noted on the bond; and it may be discharged from registration by being registered to bearer, after which it shall be trans-

ferable by delivery, but it may again be registered as before. The registry of this bond shall not restrain the negotiability of the interest coupons by delivery merely, and if default be made in the payment of any interest coupon hereto belonging, for a period of thirty days after the same shall have become due and have been presented for payment, the principal hereof may be made due and payable in the manner provided in the mortgage, or deed of trust, hereinbefore mentioned.

This bond is issued and accepted upon condition that none of the officers or stockholders of the \_\_\_\_\_ company shall be held personally liable for the payment of any part of the principal or interest hereof, and that all rights of action to enforce any such liability are waived and forever released.

Unless authenticated by the certificate endorsed hereon, duly signed by the said trustee, this bond shall not be valid.

In Witness Whereof, The \_\_\_\_\_ company, in pursuance of lawful corporate action authorizing the same, has caused its corporate seal to be hereto affixed, and this bond to be signed by its president, and attested by its secretary, this day of \_\_\_\_\_, A. D. 19 \_\_\_\_.

Company.

By

Attest:

*President.*

*Secretary.*

(Seal.)

(FORM OF INTEREST COUPON.)

\$

The \_\_\_\_\_ company promises to pay to the bearer (\$ \_\_\_\_\_) dollars, free from tax, at the office of the \_\_\_\_\_ company, in the city of \_\_\_\_\_, Pa., on the day of \_\_\_\_\_, 19 \_\_\_\_, being six months' interest on its \_\_\_\_\_ per cent. first mortgage gold bond.  
No. \_\_\_\_\_.

*Treasurer.*

(FORM OF TRUSTEE'S CERTIFICATE.)

TRUSTEE'S CERTIFICATE.

It is hereby certified, that this bond is one of the issue of bonds described in the mortgage, or deed of trust, within mentioned.  
\_\_\_\_\_ company, trustee.

By

*President.*

And Whereas, At a meeting of the board of directors of the \_\_\_\_\_ company, duly convened and held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a form of mortgage, or deed of trust, identical with this instrument, from the \_\_\_\_\_ company to the \_\_\_\_\_ company, trustee, was submitted and read, and said board of directors unanimously resolved that a mortgage, or deed of trust, of the form submitted and read to said meeting, should be executed under the corporate seal of the \_\_\_\_\_ company, signed by the president and attested by the secretary, and acknowledged and delivered to the \_\_\_\_\_ company, as trustee;

And Whereas, At a meeting of the stockholders of the \_\_\_\_\_ company, duly convened and held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, this present form of indenture was submitted and read, together with the resolutions adopted by the board of directors, authorizing and directing the execution and delivery thereof and authorizing and directing the making and issuing of the bonds intended to be secured thereby, and by resolutions unanimously adopted by the stockholders at said meeting, all action taken by the board of directors, in relation to the making and issue of said bonds and the execution and delivery of the said mortgage, was ratified, approved and confirmed;

And Whereas, All things necessary to make said bonds, when certified by the trustee, the valid and binding obligations of the \_\_\_\_\_ company, and to make this indenture a valid and binding mortgage and lien on the property hereinafter described, have been done and performed, and the making and issuing of the said bonds, and the execution of this indenture have been in all respects duly authorized;

And Whereas, The \_\_\_\_\_ trust company, of \_\_\_\_\_, Pa., is a corporation organized and existing under the laws of the State of Pennsylvania, with power to receive and execute the trust of this indenture and it has agreed to accept the same;

Now, Therefore, The said \_\_\_\_\_ company, the party of the first part hereto, in consideration of the premises and the sum of one dollar to it in hand paid by the said trustee, party of the second part hereto, the receipt of which is hereby acknowledged, has granted, bargained, sold, aliened, remised, released,

conveyed, assigned, transferred, set over and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, assign, transfer, set over and confirm unto the said trustee, and to its successor or successors, in the trust hereby created, and to its, his or their successors, heirs and assigns, forever,

All the real and personal property rights, privileges and franchises, which the                      company, party of the first part, now owns, or hereafter acquires, and including, among other things, the following, to wit:

Together with all and singular the improvements, ways, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the income, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of the said                      company, party of the first part, in law, and equity, or otherwise, howsoever, of, in, and to the same, and every part thereof.

TO HAVE AND TO HOLD all and singular the property hereinbefore mentioned and described, or intended so to be, and also all the property that shall hereafter become subject to the provisions of this indenture, with all the rights and appurtenances, privileges and franchises, pertaining thereto, and the income and profits thereof, unto the trustee, its successors and assigns.

BUT IN TRUST, NEVERTHELESS, Under and subject to the provisions and conditions hereinafter set forth, and for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued, or to be issued, under and secured by this indenture, and for the enforcement of the payment of such bonds and interest obligations, when payable, in accordance with the provisions thereof, and the covenants and provisions in this indenture contained, without preference, priority or distinction as to lien, or otherwise, of any of the bonds intended to be secured hereby, over any other of said bonds, by reason of priority in time of the issue or the negotiation thereof, or otherwise.

AND IT IS HEREBY COVENANTED AND DECLARED that all the bonds, with the interest coupons thereto belonging, and intended to be secured hereby, shall be issued, certified and delivered, and that all the property and shares of stock pledged and made subject to the lien of this indenture, shall be held by the trustee

subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is covenanted and declared between the parties hereto, as follows, viz:

## ARTICLE I.

Section 1. No bond nor any coupon thereto attached, shall be valid, or entitled to the benefit and security hereof, unless the same shall be authenticated by a certificate indorsed on said bond, signed by the trustee, that it is one of the issue of bonds described in this mortgage or deed of trust, and such certificate so authenticated shall be conclusive and the only evidence that the bond upon which it is indorsed is duly issued hereunder and entitled to the benefit and security of this indenture. All bonds at any time issued hereunder shall be executed under the corporate seal of the \_\_\_\_\_ company and be signed by its present or any future president and attested by its present or any future secretary, and the coupon attached to the bonds shall bear the engraved or lithographed fac-simile of the signature of the present treasurer of the \_\_\_\_\_ company, which shall evidence its obligation to pay the same.

The amount of bonds hereby secured and which may be executed by the \_\_\_\_\_ company and certified by the trustee, is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding \_\_\_\_\_ dollars.

Section 2. Upon the execution of this indenture, and the recording thereof, the trustee shall forthwith certify and deliver to the \_\_\_\_\_ company, upon the written order of the president thereof, \_\_\_\_\_ dollars, face value, of the bonds to be issued hereunder.

Section 3. Bonds to the amount of \_\_\_\_\_ dollars of the issue secured hereby, shall be executed, certified by the trustee, and be issued and set apart, for the purpose of refunding the like amount of the \_\_\_\_\_ bonds of the \_\_\_\_\_ company, and bonds to the amount of \_\_\_\_\_ dollars, of the issue secured hereby, shall be executed, certified by the trustee, and be issued and set apart for the purpose of refunding the like amount of \_\_\_\_\_ bonds of the \_\_\_\_\_ company, and bonds to the amount of \_\_\_\_\_ dollars of the issue secured hereby, shall remain unissued, and shall not be certified

at the time of the execution hereof, and shall be held by the trustee, to be hereafter certified and issued, if required by the company, for the purpose of improving, renewing and making betterments and extensions to its , and all bonds so to be certified, issued and set apart, for the purpose of refunding other bonds, shall be deposited with and held by and in the custody of the trustee hereunder, and shall be delivered by the trustee, only in accordance with the following conditions and provisions:

(a) It is understood and agreed that the company has the right, and may, at any time or times, exchange all or any part of the bonds of this issue which shall be certified, issued and set apart in the hands of the trustee for the purpose of refunding a like amount of other bonds as aforesaid, for an equal amount, par value, of any of the bonds so to be refunded; and the company has the right, and may, at any time or times, for the purpose of refunding a like amount of other bonds as aforesaid, use, sell, pledge or otherwise dispose of, as it shall deem proper, any of the bonds which shall be certified, issued and set apart in the hands of the trustee as aforesaid, provided, that in no event shall the trustee, except as hereinafter provided, allow or permit any of the bonds set apart and deposited with it, as aforesaid, to pass from its custody, unless at the same time there shall be cancelled and delivered to the trustees a like amount, par value, of the bonds to be refunded as aforesaid, together with all unpaid coupons, if any, thereto belonging; and provided further, that the trustee shall not be required to deliver any of the bonds set apart in its hands for the purpose of refunding other bonds, as aforesaid, except upon the written order of the company, signed by its president, or treasurer.

It is further understood and agreed that, for the purpose of aiding in said refunding and enabling the company to acquire the bonds or any of them so to be refunded from the present or any future holder or holders thereof, the company has and shall have the right to enter into any agreement with the holder, or holders, for the purchase or payment of the bonds so to be refunded and to pledge the bonds so set apart and deposited, as security, for the faithful carrying out of any agreement so made, and said trustee, on request of the company, shall certify and deliver the bonds so



pledged to any pledgee, or pledgees thereof, or deposit the same with any incorporated trust company that may be agreed upon, to hold the same subject to any such pledge, or if so required, the trustee may hold said bonds, so to be set apart and deposited, subject to any such pledge, for the use and benefit of the persons entitled thereto.

(b) The \_\_\_\_\_ company shall not require to be certified or issued any of the \_\_\_\_\_ dollars of bonds of the issue secured hereby, and to be held for the purpose of improving, renewing, and making betterments or extensions to its \_\_\_\_\_, unless before the making of any such improvements, renewals, betterments, or extensions, the \_\_\_\_\_ company shall submit to the trustee a written statement, showing the nature and character of the proposed improvements, renewals, betterments and extensions, and the estimated cost thereof, as nearly as may be, together with such further information in relation to the desirability and importance thereof as the trustee shall reasonably require; nor unless the trustee shall deem the proposed improvements, renewals, betterments or extensions, as the case may be, advisable and to the best interest of the \_\_\_\_\_ company and the holders of the bonds of the issue secured hereby and then outstanding, and approve thereof; and after having procured the approval as aforesaid, and after having made any improvement, renewal, betterment or extension to its \_\_\_\_\_, approved as aforesaid, the \_\_\_\_\_ company may require so many of the said \_\_\_\_\_ dollars of bonds to be certified and issued, as may be necessary for such purpose, and it shall be the duty of the trustee to certify and deliver to the \_\_\_\_\_ company the amount of bonds so required, provided that the \_\_\_\_\_ company shall file with the trustee a written statement, verified by the oath of the president and treasurer, or \_\_\_\_\_, of the \_\_\_\_\_ company, showing in detail the actual cost and expenditure incurred in making such improvement, renewal, betterment, or extension, as the case may be, and that additional property, equal in value to the amount named in such statement, has been brought within the lien of this mortgage; and provided further, that such sworn statement shall be accompanied by a resolution of the board of directors of the \_\_\_\_\_ company requiring bonds to be certified and issued for the purpose of making such improvement, renewal, betterment or extension, and not exceeding in amount the sum named

in such sworn statement; and provided further, that in no case shall any of such bonds be certified and issued for the purpose of making any renewal to any part or portion of the unless such renewal shall consist in introducing something new and different in kind, or design, from the old, in place of which the new shall be substituted, the intention being to enable the company, subject to the approval of the trustee, if occasion arises, to resort to and use said bonds, if deemed expedient, for the purpose of installing new and superior, or more economical devices and appliances in place of others, but in no event shall any of said bonds be used for making any such renewals as are usually made in the course of maintenance and repairs.

Section 4. The company will cause to be kept, at the office of the trustee, in the city of , Pennsylvania, a register, or registers, for the registration and transfer of bonds issued hereunder, and from time to time appoint a registrar, whose duty it shall be to keep such register, or registers, and, upon presentation, to register any such bonds therein, subject to such reasonable regulation as the trustee may prescribe, and such register, or registers, shall, at all reasonable times, be open to the inspection of the trustee.

Whenever, after any of such bonds shall have been registered, if the same be presented to the registrar at his office, accompanied by the delivery of a written instrument of transfer in a form to be approved by the company and executed by the registered holder, such bond may be transferred upon the register by the registered holder in person, or by attorney, and such transfer shall be noted by such registrar on the bond.

The registered holder of any such registered bond shall also have the right to have the same registered to bearer, in which case the transferability of such bond by delivery shall be restored, and thereafter the principal of such bond when due, shall be payable to the bearer thereof; and any such bond registered to bearer may be registered again in the name of the holder with the same effect as if a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired, and each registration of any bond shall be noted on the bond by the registrar appointed as aforesaid.

Registration of any bond, however, shall not affect the transfer ability of any coupon thereto belonging by delivery merely, and

payment to the bearer of any such coupon shall discharge the company in respect of the interest therein mentioned, regardless of whether or not the bond shall have been registered.

Section 5. In case any bond issued hereunder, or the coupon thereto appertaining, shall become mutilated or lost, or be destroyed, the company may execute, and thereupon the trustee shall certify and deliver a new bond of like tenor and date, and bearing the same serial number, and with coupons, in lieu of and in substitution for the bond and its coupons so lost or destroyed, upon receipt by the trustee of satisfactory evidence of the loss or destruction of such bond and coupons, and upon receipt also of satisfactory indemnity.

Section 6. Until the permanent bonds to be issued under and secured by this indenture shall have been prepared, the company may execute, and upon its request the trustee shall certify and deliver, in lieu of such permanent bonds, one or more temporary bonds of the denomination of dollars each, or of any multiple or multiples thereof, and of the form and tenor of the bonds to be issued hereunder, and not exceeding in the aggregate dollars in amount. Upon surrender of any of such temporary bonds for exchange, the company shall issue, and upon cancellation of such surrendered bonds the trustee shall certify and deliver, in exchange therefor, lithographed or engraved coupon bonds of the denomination and tenor hereinbefore provided, and equal in amount with the temporary bonds surrendered; and until so exchanged, each of such temporary bonds shall be entitled to the same security as a lithographed or engraved bond issue hereunder.

## ARTICLE II.

The company covenants and agrees, as follows:

Section 1. The company will punctually pay the principal and interest of every bond issued and secured hereunder, at the times and the place and in the manner mentioned in such bonds, and the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest of or for any tax or taxes lawfully imposed thereon, or which the company may be required to pay, deduct or retain therefrom, under or by reason of any present or future law. The interest on the bonds shall

Section 2. The \_\_\_\_\_ company will, from time to time, pay and discharge all taxes, licenses, governmental dues, or charges in the nature of any thereof, lawfully imposed upon, or payable by it, upon any of the property, income, indebtedness or business to it belonging, and upon every part thereof, and so that the lien of this indenture and the priority thereof shall be in all respects fully preserved; and the \_\_\_\_\_ company will, from time to time, pay and discharge, or cause to be paid and discharged, all taxes, licenses, assessments, and governmental dues, or charges in the nature of any thereof, lawfully imposed upon or payable by the \_\_\_\_\_ or any thereof, or on the property income, indebtedness or business of said companies, or any thereof, and so that the title of each and every one of said companies, to their respective properties, shall be at all times kept and preserved, free from tax liens; provided, however, that the payment shall not be required hereunder, of any tax, license, assessment, governmental due, or charges in the nature of any thereof, if and so long as the validity thereof shall be in good faith contested, and the enforcement thereof delayed.

The \_\_\_\_\_ company shall and will at all times so long as any of the bonds hereby secured or intended so to be are outstanding and unpaid, keep its buildings, machinery, fixtures and appurtenances, and all perishable personal property usually in-

sured by such companies, insured for a reasonable amount in and by responsible insurance companies, against loss or damage by fire, and pay all premiums upon the insurance policies. All such policies of insurance shall be taken in the name of the company, and shall have indorsed thereon that all loss thereunder shall be payable to the trustee hereunder, for the benefit of the several holders of the bonds hereby secured.

The proceeds of any such policy may, at the option of the company, be used in repairing or replacing at the same place or some other place, the property so damaged or destroyed, or in the purchase or redemption of bonds issued hereunder, which bonds, when redeemed, shall be cancelled by the trustees, and shall not again be used or issued. Before any such funds are paid out for repairing or replacing damaged or destroyed property, the company shall furnish to the trustee a verified detailed statement showing the repairs or replacements so made, and the amounts expended therefor, and the value of such repairs or replacements as a part of the mortgaged premises. The value of the repairs or replacements shall also, if required by the trustee, be appraised by an appraiser or appraisers selected by the trustee. The amount of such moneys used for such purpose shall never exceed the amount actually expended therefor, and shall in no event exceed the value fixed by said appraiser in case an appraisalment be made.

The trustee may, however, pay out such moneys from time to time during the progress of such repairs or replacements to the extent that the work done and materials furnished in making such repairs or replacements in the judgment of the trustee justify the making of such payments.

Section 6. The company, its successors and assigns, shall and will, on written demand of the trustee, or its successor or successors in the trust, at any time, and from time to time, make, do, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law as may be reasonably required for effectuating the intention of these presents, and for the better assuring or confirming unto the trustee, and its successors in the trust hereby created, upon the trusts and for the purposes herein expressed, all and singular, the property, real, personal and mixed, incomes, franchises, rights and privileges hereby granted, bargained, conveyed, assigned, transferred and set over, or intended so to be, either now owned or

possessed, or hereafter owned, possessed or acquired by the company, its successors or assigns.

Section 7. The                      company covenants that it will do and perform all such acts and things as may be necessary to preserve its corporate franchises and to enable it to own, maintain and operate the mortgaged property and premises.

#### ARTICLE III.

The                      company covenants that it will from time to time, assign, transfer and deliver unto the trustee, as additional security for the bonds issued or to be issued hereunder, all shares of stock of other corporations which it may, at any time, hereafter acquire; and all such shares of stock so assigned, transferred, and delivered to the trustee shall be held by the trustee for the benefit and security of the several holders of the bonds issued hereunder, and shall be subject to the trusts of this indenture, as fully and completely as though specifically assigned, transferred, and delivered to the trustee at the execution hereof. And as to all shares of stock assigned, transferred and delivered to the trustee, either at the time of the execution hereof, or any subsequent time, or times, the following additional covenants and provisions are hereby made, viz:

(1) It shall be the duty of the trustee to see that the shares of stock of every corporation transferred to it for the purpose of this trust, are duly and properly assigned to it for the said trustee, or its nominee, upon the books of such corporation, and that proper certificates therefor are issued by the corporation, and the transfers on the books shall be to the                      company, or its nominee, as "trustee and pledgee, under an indenture made by                      company, dated                      ." The same shall also appear at length on the certificates of stock.

(2) The trustee shall file with the several corporations, whose shares of stock are so transferred, standing orders to pay over to the                      company, from time to time, all dividends which shall be payable on the said shares of stock, and the                      company shall collect and receipt for said dividends. If default be declared against the                      company, as herein provided, the trustee may, in addition to the other remedies in such case provided, revoke such orders and collect and receive all such dividends thereafter payable on such shares of stock. All

sums so collected or received by the trustee, after deducting all expenses incurred by the trustee in the premises, shall be applied by the trustee as follows: In case the principal of the bonds hereby secured shall not have become due (1) to the payment of any interest in default upon the bonds hereby secured in the order of the maturity of the installments of such interest, with interest on the overdue instalments thereof at the rate of

( ) per annum, and (2) to the payment of any other sums that then shall be due and payable from the company under the provisions of this indenture; but in case the principal of the bonds hereby secured shall have become due by declaration or otherwise, then such moneys shall be applied, first, to the payment of the accrued interest, in the order of the maturity of such interest installments, and next to the payment of the principal of all bonds hereby secured, without discrimination or preference. After any such default shall have been made good or shall have been waived, the right of the company to receive and collect such dividends on such stocks and the duty of the trustee to execute such assignments and orders shall revive, and shall continue as though such default had not taken place.

(3) Unless there shall be some continuing default that shall have been declared against the company, as provided in this indenture, the company shall have the right, except as hereinafter limited, to vote upon all shares of stock which shall have become subject to this indenture for all purposes not inconsistent with the provisions and purposes of this indenture, with the same force and effect as though such shares were not subject to this indenture; and the trustee, on demand of the company, shall, from time to time, execute and deliver to the company, or to such person or persons as may be designated by resolution of its board of directors, or in the absence of such resolution, upon the written authority of the president of the company, such proxies or powers of attorneys as well enable the company, or the person or persons so designated, to vote upon all shares of stock of other corporations or associations that shall have been transferred to the trustee hereunder, at all meetings, whether general or special, of the shareholders of any such corporation or association, to the same extent and with the same effect (subject to the limitations herein

contained) as though such shares were absolutely owned by the company and were not subject to this indenture.

Nevertheless, in all cases where the shares of stock so transferred to the trustee constitute a majority of the shares of stock of any corporation, the voting power of such shares shall not in any case or at any time be conferred or be used or exercised for the purpose of authorizing the creation of any secured indebtedness of any corporation or association, a majority of the shares of the capital stock of which shall be held by the trustee hereunder, or the creation of any lien or charge upon the property or franchises of such corporation or association, except to secure advances or loans from the company, to enable such corporation or association to make betterments, improvements, or extensions, or to acquire additional property, or to pay and discharge liens or charges upon the property or franchises of such company. Any such secured indebtedness, lien or charge created as security for advances or for loans from the company, and the evidence thereof, forthwith shall be transferred by the company to the trustee hereunder and by it held in all respects as though the same had been transferred and delivered to the trustee under the granting clauses hereof, at the time of the execution of this indenture.

Until a default shall have been declared against the company, as provided herein, all sums which shall be paid in satisfaction or discharge of any such secured indebtedness, lien, charge or obligation, shall belong to and be received by the company, and shall not be held by the trustee. A certificate duly verified by the president or vice president, and the treasurer of the company, stating that such lien, charge, indebtedness or obligation has been paid in whole or in part, shall be sufficient proof to the trustee of the facts therein stated, and upon receipt of such proof that such lien, charge, indebtedness or obligation has been fully paid, the trustee shall cancel and surrender to the company the evidence of such lien, charge, indebtedness or obligation, and if the same be of record shall cause satisfaction thereof to be entered of record. All sums paid in satisfaction or discharge of any such indebtedness, lien, charge or obligation, and received by the trustee after there shall have been a default declared, as provided herein, shall be kept by the trustee in a separate fund, and shall be used and applied by the trustee in the same manner as provided in



clause two (2) of this section with reference to dividends upon shares of stock pledged hereunder received by the trustee after default shall have been declared.

Whenever requested by resolution adopted by the affirmative votes of at least two-thirds of the directors of the company, the trustee shall vote or shall execute its proxy or power of attorney to vote upon the shares of stock of other companies held by it under this indenture in favor of the increase or reduction from time to time of the capital stock of any such company. In case of the increase of the capital stock of any company, the greater part of whose capital stock shall be pledged hereunder, the \_\_\_\_\_ company forthwith shall assign, transfer and deliver to the trustee by it to be held upon the trusts of this indenture in the same manner as though assigned and transferred and delivered to the trustee at the date of the execution hereof, the additional fully paid capital stock of such company, or such part thereof as shall be proportionate to the part of the entire capital stock of such company previously held by the trustee hereunder.

In case of the reduction of the capital stock of any such corporation, the trustee may surrender the shares necessary for the purpose of effecting such reduction, or such part thereof as shall be proportionate to the part of the entire capital stock of such company previously held by the trustee hereunder.

The trustee is also authorized and directed, whenever requested by a resolution adopted by the affirmative votes of at least two-thirds of the directors of the \_\_\_\_\_ company, to vote, or execute its proxy, or power of attorney, to vote upon the shares of stock of any company pledged hereunder, in favor of the merger and consolidation of such company with any other company with which any merger or consolidation may be lawfully made, and generally to vote in favor of the exercise of any power, now or hereafter vested in any company whose shares of stock are pledged hereunder, provided that, in the opinion of the trustee, such power may be exercised without detriment to the owners and holders of the bonds secured hereby, or provided that a majority of such bondholders shall assent thereto in writing.

(4) At any time in its discretion the trustee may, and if requested in writing by the \_\_\_\_\_ company shall, consent to the extension or renewal of any bonds or obligations which hereafter shall be deposited by the \_\_\_\_\_ company with the

trustee hereunder, and to the extension or renewal of any mortgage or lien securing such bonds or obligations. The trustee may receive the opinion of any counsel as conclusive evidence of the existence of all facts authorizing any such extension or renewal of bonds or obligations.

Section 2. The \_\_\_\_\_ company further covenants and agrees that if any company of whose capital stock the greater part shall be pledged hereunder, while the greater part of the capital stock is so pledged, shall fail to pay any taxes, assessments or other charges lawfully imposed upon its property, or upon the business, income, indebtedness or profits of such company, then the \_\_\_\_\_ company will forthwith pay and discharge the same; provided, however, that the \_\_\_\_\_ company shall not be required to pay any such tax, assessment or charge, so long as the validity thereof shall in good faith be contested, unless such payment shall be necessary to prevent forfeiture or loss of any property of such company.

Section 3. The \_\_\_\_\_ company further covenants and agrees that if any company of whose capital stock the greater part shall be pledged hereunder, while the greater part of the capital stock of such company shall be pledged hereunder, shall create or suffer to be created, or permit to exist, any lien or charge upon its property or income, or create or suffer to be created, or permit to exist any indebtedness other than (1) indebtedness existing at the date of transfer and pledge of such shares of stock hereunder, or indebtedness in substitution of any secured indebtedness existing at such date or (2) indebtedness for the current operating expenses of such company during a period not exceeding six months, then the \_\_\_\_\_ company forthwith will pay and discharge the same, or will acquire and transfer the same to the trustee for the further security of the bonds hereunder in the same manner and upon like conditions as are provided in clause 3 of section 1 of this article as to secured indebtedness transferred to the trustee.

#### ARTICLE IV.

Section 1. Until some continuing default shall have been made in the due and punctual payment of the interest of the principal of the bonds hereby secured, or of some part of such interest or principal or in the due and punctual performance of some cov-

enant or condition hereof, obligatory upon the company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property (except shares of stock to be delivered to and held by the trustee) that may be conveyed and mortgaged to the trustee, and to manage, operate and use, or cause to be managed, operated and used, the same, and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits thereof. With the right at all times to alter, change, add to, repair, dispose of and replace any and all , machinery and fixtures; provided only that the security of said bonds shall not thereby be in any way impaired or diminished.

Section 2. The company shall maintain, preserve and keep, or cause to be maintained, preserved and kept, the mortgaged property and premises and every part thereof, in thorough repair, working order and condition, and supplied with and equipment, and will, from time to time, make or cause to be made, all needful and proper repairs, replacements, additions, betterments and improvements, so that the efficiency of the mortgaged property, and every part thereof, and the mortgage security, shall at no time be impaired or diminished, and that the business thereof shall at all times be conducted in a good and business like manner.

Section 3. If at any time any property, subject to this indenture, including the shares of stock pledged hereunder, cannot be advantageously used in the proper and judicious operation of the business of the company, or if the sale or disposition thereof has become necessary for any cause, the same or any interest therein may be sold, or exchanged for other property, and upon the requisition of the company, the trustee shall release the same from the lien and effect of this indenture, but only upon the following provisions and conditions:

(a) The necessity and propriety of such sale, exchange or disposition shall be approved by a person or persons selected or approved by the trustee, who shall make a report in writing to the trustee stating the reasons for such approval.

(b) Before any property or any interest therein shall be released, the same shall be appraised by an appraiser, or by more

than one appraiser, who shall be selected or approved by the trustee.

(c) In case of such sale of any property, or of any interest therein, the price or proceeds of such sale, not less than the value of such property, or of such interest, as appraised by the appraisers, or a sum equal to such price or proceeds, shall be deposited with the trustee hereunder to be held for the further security of the bonds hereby secured until paid over or applied as hereinafter provided.

(d) In case of an exchange, other property appraised by an appraiser or appraisers selected or approved by the trustee, to be of value at least equal to the appraised value of the property given in exchange, shall be subject to the lien and operation of this indenture, free and clear of all other liens or encumbrances.

The moneys received by the trustee upon any such sale, and any moneys received by the trustee upon any other disposition of any property subject to this indenture shall be applied as follows:

(1) The \_\_\_\_\_ company, under the direction of the trustee, may thereafter expend such money or part thereof, in the acquisition of real estate necessary for the use of the \_\_\_\_\_ company, or in \_\_\_\_\_ or in the construction of plants or buildings necessary or useful in the operations of the company, which lands, extensions and additions shall forthwith be subject to the lien of this indenture, free and clear of all other liens and encumbrances and claims for which liens might be claimed.

Before any such funds are paid out for such purpose, the \_\_\_\_\_ company shall furnish to the trustee a verified statement showing the amounts actually expended by the \_\_\_\_\_ company, and for what property, and such property shall also be valued by an appraiser or appraisers selected or approved by the trustee. The amount of such moneys used for the payment for such property shall not exceed the amount actually expended by the \_\_\_\_\_ company therefor, and shall in no event exceed the value of such property as fixed by such appraiser or appraisers.

(2) Or, if so requested by the \_\_\_\_\_ company, the trustee may apply such proceeds, or any part thereof, in purchasing bonds hereby secured, which bonds when so purchased shall be cancelled by the trustee and shall not again be used or issued.

## ARTICLE V.

Section 1. No coupon belonging to any bond hereby secured, which in any way at or before maturity shall have been transferred or pledged, separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of, or from this indenture, except after the prior payment in full of the principal of the bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

Section 2. In case default shall be made (1) in the payment of any interest on any bond or bonds hereby secured and outstanding, and any such default shall have continued for a period of        days, or (2) in case default shall be made in the payment of the principal of any of the bonds hereby secured and outstanding, or (3) in case default shall be made in the prompt payment of any debt or charge required by section 4 of article 2 hereof to be paid by the        company, or, in case default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the        company, and any such last mentioned default shall continue for a period of        days after written notice thereof to the        company from the trustee, or from the holders of        per cent. in amount of the bonds hereby secured and then outstanding, specifying wherein such default consists, then and in every case the trustee shall declare the principal of all the bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds to the contrary notwithstanding.

This provision, however, is subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of        per centum on all overdue installments of interest shall either be paid by the        company or be collected out of the mortgaged premises, before any sale of the mortgaged premises shall have been made, and every other default incurred by the        company, if, any, shall have been made good, then and in every such case the holders of a majority in amount of the bonds hereby secured and then out-

standing by written notice to the \_\_\_\_\_ company and to the trustee may waive such default and its consequences, and the holders of the remainder of the bonds shall be bound by such waiver; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 3. In case default shall be declared against the company, as provided in section 2 of this article, the company, upon demand of the trustee, shall and will forthwith surrender to the trustee the actual possession, and the trustee shall be entitled forthwith, with or without process of law, to enter into and upon and take possession of all and singular the property and premises hereby mortgaged, or pledged, or intended so to be, and each and every part thereof, with all records, books, papers and accounts of the \_\_\_\_\_ company, and to exclude the \_\_\_\_\_ company, and its agents and servants, wholly therefrom, and it shall have, hold and use the same, controlling, managing and operating by its superintendents, managers, receivers, servants and other agents, or attorneys, the said property, with the appurtenances, and conducting the business and operations thereof and exercising the franchises pertaining thereto, and making from time to time, at the expense of the trust estate, all repairs and replacements, and such useful additions, alterations and improvements thereon and thereto as to the said trustee may seem proper and judicious, and may collect and receive all income, rents, issues and profits of the same, and every part thereof, and after deducting all expenses of maintaining, managing and operating said property and conducting the business thereof, and of all repairs, replacements, additions, alterations and improvements so made, and all payments made for taxes, levies, assessments, insurance premiums and other proper charges upon said property, or any part thereof, and as well just compensation for services of the trustee, its agents, clerks, servants, attorneys and counsel, shall apply the remainder of the money so received by its as follows:

In case the said bonds shall not have become due by maturity, and if every default, if any, declared shall have been waived, or made good, as provided in section 2 of this article, such moneys shall be paid over to the \_\_\_\_\_ company, or as it may in writing direct; and if said bonds shall have become due at maturity, or such default shall not have been so waived or made

good, then such moneys shall be applied in the manner provided in section 9 of this article.

Section 4. The principal of the bonds secured hereby having become due at maturity, or having been made due, as in this article provided, the trustee, in its discretion, may, after entry or without entry and taking possession, and shall, if so requested in writing by the holders of \_\_\_\_\_ per cent. in amount of the bonds then outstanding and unpaid, proceed to sell at public auction, either separately or as a whole, unto the highest and best bidder, all and singular the property then subject to the lien of this indenture. Any such sale shall be made at public auction in the \_\_\_\_\_ or at such other place and at such time, and upon such terms as the trustee may fix and briefly specify in the notice of sale to be given as herein provided; or the trustee may proceed to protect and enforce its rights and the rights of the bondholders under this indenture by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in and of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy as the trustee being advised by counsel learned in the law shall deem effectual to protect and enforce the rights aforesaid.

The trustee may adjourn, from time to time, any sale by it to be made under the provisions of this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale, and without further notice or publication it may make such sale at the time and place to which the same shall be so adjourned.

Section 5. Notice of any such sale pursuant to any provision of this indenture shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and whether the same is to be sold in parcels or in one lot, and shall be sufficiently given if published once in each week for \_\_\_\_\_ successive weeks prior to such sale in \_\_\_\_\_ daily newspapers of general circulation, published in the \_\_\_\_\_, Pennsylvania, and also in like manner in \_\_\_\_\_ daily newspapers of general circulation published in \_\_\_\_\_, Pennsylvania.

Section 6. In case the trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or aban-

done because of any waiver, or for any other reason or shall have been determined adversely to the trustee, then and in every such case the                      company and the trustee shall be restored to their respective former positions and rights, in respect to the mortgaged property and all rights, remedies and powers of the trustee shall continue as though no such proceeding had been taken.

Section 7. Any such sale or sales made under or by virtue of this indenture, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity of the                      company of, in and to the property so sold, and shall be a perpetual bar, both at law and in equity, against the                      company, its successors and assigns, and against any and all persons claiming or to claim the property sold, or any part thereof, from, through or under the                      company, its successors or assigns, and the receipt of the trustee for the consideration money paid at any such sale shall be a sufficient discharge to the purchaser, without any liability upon the part of the purchaser to see to the application of the purchase money, or to be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 8. In case of such sale, whether under the powers of sale hereby granted or pursuant to judicial proceedings, the principal sums of all the bonds hereby secured, if not previously due, shall immediately thereupon become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

Section 9. The purchase money, proceeds and avails of any such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by the trustee, under any of the provisions of this indenture, as part of the trust estate or the proceeds thereof, shall be applied as follows:

(1) To the payment of the costs and expenses of such sale, including a reasonable compensation to the trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the trustee.

(2) To the payment of the whole amount then owing or unpaid upon the bonds hereby secured, for principal and interest, with interest at the rate of                      per centum per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and



unpaid upon such bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any instalment of interest over any other instalment of interest, but ratably to the aggregate of such principal and accrued and unpaid interest, subject, however, to the provisions of section 1 of this article.

(3) To the payment of the surplus, if any, to the company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

Section 10. In case of any sale hereunder, any purchaser for the purpose of making settlement for the property purchased, shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons, in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons, as his ratable share of such net proceeds, after making any deductions which may be made from the proceeds of sale, for costs, expenses, compensation and other charges; and thereupon such purchaser shall be credited on account of such purchase price payable by him, with the sums applicable out of such net proceeds to the payment of, and credited on the bonds and coupons so presented, and, at any such sale, any bondholders may bid for and may purchase such property, and may make payment therefor as aforesaid.

Section 11. The \_\_\_\_\_ company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for a period of \_\_\_\_\_ days, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether by the maturity of said bonds, or by declaration as authorized by this indenture, or by a sale as provided in section 4 of this article, then upon demand of the trustee, the \_\_\_\_\_ company will pay to the trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of \_\_\_\_\_ per cent. per annum, upon the overdue principal and instalments of interest; and in case the \_\_\_\_\_ company shall fail to pay

the same forthwith upon such demand the trustee, in its own name and as trustee, for the use and benefit, equally and ratably, of the owners and holders of the bonds and interest coupons secured hereby, shall be entitled to recover judgment against the company for the whole amount so due and unpaid, either before, during or after any proceeding hereunder for the enforcement of the lien of this indenture.

Section 12. The company covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of any stay or extension or exemption law now or at any time hereafter in force, nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force providing for valuation or appraisal, of the mortgaged property or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any state or otherwise, to redeem the property so sold or any part thereof; and it hereby expressly waives all benefits and advantage of any such law or laws; and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the trustee; but that it will suffer and permit the execution of every such power, as though no such law or laws had been enacted.

Section 13. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity, or at law, for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, or for the collection of any of said bonds or coupons, unless such holder previously shall have given to the trustee written notice of a default; and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of per cent. in amount of the bonds hereby secured, then outstanding, shall have made written request upon the trustee and shall have offered to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such actions, suit or proceeding in its own name; nor unless, also, they shall have offered to the trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and

such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the trustee, to be conditions precedent to the execution of the powers and trusts of this indenture, for the benefit of the bondholders, and to any action or cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever by his or their action, to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Section 14. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall in addition to every other remedy given hereunder, or now, or hereafter existing law or in equity or by statute; but no action at law shall be instituted against the \_\_\_\_\_ company by any bondholder to enforce the contractual liability of the \_\_\_\_\_ company by reason of its covenants and promises contained in said bonds until the property hereby mortgaged shall have been exhausted by pursuit of the remedies herein provided.

Section 15. No delay or omission of the trustee, or of any holders of bonds hereby secured, to exercise any right or power accruing upon any default, continuing as aforesaid, shall impair any such right or power, or be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this article to the trustee or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient by the trustee or by the bondholders.

#### ARTICLE VI.

Section 15. No delay or omission of the trustee, or of any amount of all the bonds hereby secured for the time being outstanding, by their votes at a meeting of the bondholders held as provided in section 2 of this article or by an instrument or in-

struments in writing, signed by such bondholders, at or following such meeting, shall have power (1) to assent to and authorize any modification or compromise of the rights of the bondholders and of the trustee against the \_\_\_\_\_ company, or against any property covered by this indenture, as may be recommended by the trustee, whether such rights shall arise under these presents or otherwise; and (2) to assent to and authorize any modification of the provisions of this indenture that shall be proposed by the \_\_\_\_\_ company and recommended by the trustee.

Section 2. Meetings of the bondholders may be convened in \_\_\_\_\_ Pennsylvania, by the trustee, and shall be convened by the trustee on the request in writing of the holders of \_\_\_\_\_ in amount of the outstanding bonds, and in the event of the refusal or neglect of the trustee for \_\_\_\_\_ days after such request shall have been delivered to the trustee to convene such meeting, or meetings, of the bondholders, the holders of \_\_\_\_\_ in amount of the then outstanding bonds may convene the same, and notice of the time, place and purpose of every such meeting or meetings, shall be given by the party or parties, calling the same by advertisement \_\_\_\_\_ a week for successive weeks in at least \_\_\_\_\_ daily newspapers of general circulation, published in the \_\_\_\_\_, State of Pennsylvania, and also, in like manner, in \_\_\_\_\_ daily newspapers of general circulation published in the \_\_\_\_\_, Pennsylvania, the last of which advertisements shall not be less than \_\_\_\_\_ days before the date fixed for such meeting. A copy of such notice shall also be mailed, in a sealed envelope, duly stamped and addressed, to each registered holder of a bond, or bonds. Subsequent meetings may be called in such manner as may be fixed by regulations prescribed or established by the bondholders at such meetings; and such regulations or by-laws in respect of such meetings may, from time to time, be established, altered or repealed by \_\_\_\_\_ in amount of the bonds represented at such meeting as to them shall deem expedient; and until the bondholders shall make such regulations and by-laws, such powers may be exercised by the trustee. At all such meetings bondholders may be represented and vote in person, or by proxy. Any act or resolution of the bondholders affecting the duties of the trustee shall be authenticated by the signatures of all the bondholders in person, or by proxy, assenting thereto, as well as by a minute of the proceedings of the meeting. The presence

in person, or by proxy, of the holders of not less than in interest of the outstanding bonds hereby secured shall be required to constitute a quorum at any such meeting of the bondholders.

Any action herein authorized taken with the assent or authority, given as aforesaid, of the holders of in interest of the bonds hereby secured for the time being outstanding and duly evidenced as herein required, shall be binding upon the holders of all the bonds hereby secured, and upon the trustee as fully as though such action were specifically and expressly authorized by the terms of this indenture.

#### ARTICLE VII.

Section 1. Any request, direction, resolution, or other instrument required by this indenture to be signed and executed by bondholders, may be in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person, or by agent appointed in writing. Proof of the execution of any such request, direction, resolution or other instrument, or of the writing appointing any such agent, and of the ownership of bonds, which are not registered as hereinbefore provided, shall be sufficient for any purpose of this indenture, and shall be conclusive with regard to any action taken by the trustee under such request if made in the following manner:

The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction, who, by the laws thereof, has power to take acknowledgments of deeds within said jurisdiction, that the person signing such writing, acknowledged before him the execution thereof; or, by the affidavit of a subscribing witness to such execution.

The fact of the holding of bonds issued hereunder by any bondholders, and the amount and the serial number thereof, and the date of his holding of any such bonds, may be proved by a certificate executed by any trust company, bank, bankers or other depositories (wherever situate) if such certificate shall be deemed by the trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such trust company, bank, bankers or other depository, the bonds described in such certificate.

Section 2. The                      company and the trustee may deem and treat the bearer of any bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon as the case may be, for the purpose of receiving payment thereof, and for all other purposes, unless the trustee shall have been notified in writing to the contrary.

The                      company and the trustee may deem and treat the person in whose name a bond shall be registered upon the books of the                      company as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, except to receive payment of interest represented by outstanding coupons; and all such payments so made to any such registered holder, or to his legal representatives or assigns, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

#### ARTICLE VIII.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the                      company, or against any successor corporation, either directly or through the company, by the enforcement of any assessment, or by any legal or equitable proceedings by virtue of any statute or otherwise, it being expressly agreed and understood that this mortgage and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the                      company, or by any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or which may be implied therefrom; and it is agreed that this indenture and the bonds and coupons hereby secured are executed and accepted on condition

that any and all personal liability, and all rights of action, and claims of whatsoever nature, against every such incorporator, stockholder, officer or director, whether at common law or equity, or created by statute or constitution, or otherwise arising, are hereby expressly waived and forever released.

## ARTICLE IX.

If when the bonds hereby secured shall have become due and payable, the \_\_\_\_\_ company shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the bonds and coupons for interest thereon hereby secured and then outstanding, or shall provide for such payment by depositing with the trustee hereunder for the payment of such bonds and coupons, the entire amount then due thereon for principal and interest, and also shall pay, or cause to be paid, all other sums payable hereunder by the \_\_\_\_\_ company, and shall well and truly keep and perform all the things herein required to be kept and performed by its according to the true intent and meaning of this indenture; then and in that case all property, rights and interests hereby conveyed or pledged shall revert to the \_\_\_\_\_ company, and the estate, rights, title and interest of the trustee shall thereupon cease, determine and become void; and the trustee in such case, on demand of the \_\_\_\_\_ company, and at the cost and expense of the \_\_\_\_\_ company, shall execute proper instruments acknowledging satisfaction and for the discharge of record of this indenture, and shall transfer and deliver to the \_\_\_\_\_ company all shares of stock, or other securities, which may then be pledged hereunder.

## ARTICLE X.

Section 1. Any trustee hereafter appointed, may be removed at any time by an instrument, or concurrent instruments, in writing signed by the holders of not less than \_\_\_\_\_ in amount of the bonds hereby secured and then outstanding. In case at any time the trustee, or any trustee hereafter appointed, shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in amount of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments signed by

such bondholders, or their attorneys in fact, duly authorized, but in case at any time there shall be a vacancy in the office of trustee hereunder, the \_\_\_\_\_ company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders, as herein authorized. The \_\_\_\_\_ company shall publish notice of any such appointment by it made once in each week for \_\_\_\_\_ successive weeks in a daily newspaper of general circulation published in the \_\_\_\_\_, Pennsylvania, and in like manner, in \_\_\_\_\_ daily newspaper of general circulation, published in the \_\_\_\_\_, Pennsylvania.

At any time within \_\_\_\_\_ months from the date of the last publication of such notice, the holder or holders of a majority in amount of the bonds then outstanding, if for any reason dissatisfied with the trustee so appointed by the \_\_\_\_\_ company, may, in the manner hereinbefore provided, appoint a new trustee. A copy of the instrument, or instruments, constituting such appointment shall be deposited with the \_\_\_\_\_ company, and the original thereof delivered to the new trustee; whereupon such new trustee shall deliver a certified copy of such appointment so made by the bondholders to the trustee appointed by the \_\_\_\_\_ company, and thereupon the trustee named by the bondholders shall be vested with all the powers, authority and estates granted and conveyed to the trustee herein named without any other or further assurance or conveyance. Until the appointment of a successor in the manner herein provided, the trustee appointed by the \_\_\_\_\_ company shall be vested with all the powers herein conferred upon the trustee. Every trustee appointed by the bondholders, or by the \_\_\_\_\_ company, shall be an incorporated trust company in good standing, having its principal office in the \_\_\_\_\_, Pennsylvania.

Section 2. Any new trustee appointed hereunder shall execute, acknowledge and deliver to the trustee last in office, and also to the \_\_\_\_\_ company, an instrument accepting such appointment hereunder, and thereupon such new trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein; and the trustee ceasing to act, shall, nevertheless, on the written request of the \_\_\_\_\_ company, or of the new trustee, execute, acknowledge and de-



liver to such new trustee such instruments as may be reasonably required to convey upon the trusts herein expressed, all the estates, properties, rights and powers of the trustee so ceasing to act and shall duly assign, transfer and deliver all property and moneys held by such trustee to the new trustee. Should any deed, conveyance or instrument in writing from the company be required by any new trustee for more fully and certainly vesting in and confirming to such new trustee such estate, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, be made, executed, acknowledged and delivered by it.

#### ARTICLE XI.

The trustee for itself and its successors, hereby accepts the trusts and assumes the duties herein created and imposed upon it, but only upon the following terms and conditions, to wit:

(a) The trustee shall be protected in acting upon any notice, request, consent, certificate, bond or other paper or document believed by it to be genuine, and to have been signed by the proper party.

(b) The trustee shall not be obliged to take notice of any default on the part of the \_\_\_\_\_ company until it has received written notice thereof, signed by holders of at least \_\_\_\_\_ per cent. in amount of the bonds outstanding hereunder.

(c) The trustee shall not be personally liable for any debts contracted by it, nor for damages to persons or property, nor for injuries or salary or nonfulfillment of contracts, during the period wherein the trustee shall manage the trust property or premises, whether upon entry or otherwise. The trustee shall not be under any responsibility or duty with respect to the disposition of the bonds hereby secured or their proceeds.

(d) The trustee may select and employ, in and about the execution of this trust suitable agents and attorneys, whose reasonable compensation shall be paid to the trustee by the company, or in default of such payment, shall be a charge upon the hereby pledged premises and property and the proceeds thereof, paramount to said bonds. The trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, or for anything

whatever, in connection with this trust, except wilful misconduct or gross negligence.

(e) The trustee shall have a first lien upon the pledged property and fund for its reasonable expenses, counsel fees and compensation and any liability incurred by reason of the trust hereby created in the exercises and performance of its powers and duties hereunder.

(f) The trustee shall be under no obligation or duty to perform any act hereunder, or defend any suit in respect hereof, unless reasonably indemnified. Excepting as herein expressly otherwise provided, the trustee shall not be bound to recognize any person as a bondholder, unless or until his bonds are submitted to the trustee for inspection, if required, and his title satisfactorily established, if disputed.

(g) It shall be no part of the duty of the trustee to file or record this indenture as a mortgage, or conveyance of real estate, or as a chattel mortgage or conveyance of personal property, or to renew such mortgage, real or personal, or to procure any further, other or additional instrument or further assurance, or to do any other act which may be suitable and proper to be done to the continuance of the lien hereof, or for giving notice of the existence of such lien, or for extending and supplementing the same; nor shall it be any part of its duty to effect insurance against fire or other damage on any portion of the mortgaged property or to renew any policies of insurance, or to keep itself informed as to the payment of any taxes or assessments, or to require such payment to be made; but the trustee may, in its discretion, do any or all of these things.

(h) The trustee, or any successor or successors hereafter appointed, may resign and be discharged of the trusts hereby created by written notice thereof to the \_\_\_\_\_ company, and by publication at least \_\_\_\_\_ in each week for successive weeks in a daily newspaper published in the \_\_\_\_\_, State of Pennsylvania, and by due execution of the conveyance herein required.

(i) The recital of facts herein and in said bonds contained shall be taken as statements by the \_\_\_\_\_ company, and shall not be construed as made by the trustee.

## ARTICLE XII.

Section 1. All the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the company shall bind its successors and assigns, whether so expressed or not. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the terms " company" includes, and means not only the party of the first part hereto, but also its successors and assigns.

Section 2. The word "trustee" means the trustee for the time being, whether original or successor; the words "trustee," "bond," "bondholder," shall include the plural as well as the singular number, unless otherwise expressly indicated. The word "coupons" refers to the interest coupons belonging to the bonds secured hereby. The word "person" used with reference to a bondholder shall include persons, associations, partnerships or corporations owning any of said bonds.

The board of directors of the company has, by resolution, duly appointed its attorney to acknowledge this indenture, and the said company doth hereby constitute and appoint to be its attorney, for it and in its name and as and for its corporate act and deed, to acknowledge this indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

The board of directors of the trust company has, by resolution, duly appointed its attorney to acknowledge this indenture, and the said trust company doth hereby constitute and appoint to be its attorney, for it and in its name and as and for its corporate act and deed, to acknowledge this indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

In witness whereof, the said parties hereto have caused their corporate seals to be affixed to an original and duplicate hereof, attested by their respective secretaries, and these presents to be signed by their respective presidents the day of , A. D. 19 .

Company.

By

*President.*

Attest :

*Secretary.**Company.  
Trustee.*

By

*President.**Secretary.*

Attest :

STATE OF PENNSYLVANIA, }  
COUNTY OF } ss:

I hereby certify that on this            day of            , A. D. 19    , before me, the subscriber, a notary public in and for said county and state, personally appeared            , the attorney named in the foregoing indenture, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said indenture to be the act and deed of the said company.

Witness my hand and notarial seal the day and year aforesaid.  
*Notary Public.*

STATE OF PENNSYLVANIA, }  
COUNTY OF } ss:

I hereby certify that on this            day of            , A. D. 19    , before me, the subscriber, a notary public in and for said county and state, personally appeared            , the attorney named in the foregoing indenture, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said indenture to be the act and deed of the said            trust company.

Witness my hand and notarial seal the day and year aforesaid.

*Notary Public.*COMMONWEALTH OF PENNSYLVANIA, }  
COUNTY OF } ss:

Recorded on this            day of            , A. D. 19    , in the recorder's office of said county in Mortgage Book, Vol.    , page    .

Given under my hand and the seal of the said office the day and year aforesaid.

*Recorder.*

**260. Second Mortgage Clause.**

See form, paragraph 92, page 115.

**261. Installment Mortgage (Second Mortgage.)\***

THIS INDENTURE, Made the *Twentieth* day of *August* in the year of our Lord one thousand nine hundred and ten (*1910*) BETWEEN *J. N., of the City of Philadelphia and M. his wife* (hereinafter called the Mortgagors), of the one part, and *G. C. T. of said City, Merchant*, (hereinafter called the Mortgagee ), of the other part.

WHEREAS, The said Mortgagors, in and by *their* Obligation or Writing obligatory under *their* hands and seals duly executed, bearing even date herewith, stand bound unto the said Mortgagee in the sum of *One thousand Two hundred Dollars* lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of the said Obligation, a *fire* policy or policies of insurance in good and approved company or companies, duly assigned as collateral security to the Mortgagee or *his* Executors, Administrators or Assigns, to an amount not less than *Six Hundred Dollars*, upon the buildings on the premises hereinafter described, and conditioned for the payment of the just sum of *Six Hundred Dollars* lawful money as aforesaid, [*within six years from the date thereof in installments of not less than One Hundred Dollars per year*] together with interest payable *semi-annually* at the rate of *six* per cent. per annum without any fraud or further delay; and for the production to the said Mortgagee or *his* Executors, Administrators or Assigns, on or before the *First* day of *December* of each and every year, of receipts for all taxes and water rates of the current year assessed upon the mortgaged premises. PROVIDED, HOWEVER, and it is thereby expressly agreed, that if at any time default shall be made in the payment of interest as aforesaid, *or*

\*This form is a second mortgage providing for the payment of the principal in instalments. If a straight second mortgage is desired, leave out the clauses in brackets in both mortgage and bond which read "Within six years from the date thereof in instalments of not less than one hundred dollars per year," and substitute the words "At the expiration of five years thereof." Also, omit the words, "or any instalment thereof."

of any *installment* for the space of *thirty* days after any payment thereof shall fall due, or in the prompt and punctual maintenance of said *fire* insurance so assigned as aforesaid, or in such production to the Mortgagee or his Executors, Administrators or Assigns, on or before the *first* day of *December* of each and every year, of such receipts for such taxes and water rates of the current year upon the premises mortgaged, then and in such case the whole principal debt aforesaid, shall, at the option of the said Mortgagee or his Executors, Administrators or Assigns, become due and payable immediately; and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, any thing therein contained to the contrary notwithstanding. AND PROVIDED FURTHER, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum at maturity, or of said interest, or in production of said receipts for taxes and water rates, within the time specified, a writ of Fieri Facias is properly issued upon the judgment obtained upon said Obligation, or by virtue of said Warrant of Attorney, or a writ of Scire Facias is properly issued upon this Indenture of Mortgage, an attorney's commission for collection, viz: *five* per cent. shall be payable, and shall be recovered in addition to all principal and interest besides costs of suit, as in and by the said recited Obligation and the Condition thereof, relation being thereunto had may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH, That the said Mortgagor, as well for and in consideration of the aforesaid debt or principal sum of *Six Hundred Dollars* and for the better securing the payment of the same, with interest as aforesaid, unto the said Mortgagee his Executors, Administrators and Assigns, in discharge of the said recited Obligation, as for and in consideration of the further sum of One Dollar unto *him* in hand well and truly paid by the said Mortgagee at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, *hath* granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents *doth* grant, bargain, sell, alien, enfeoff, release and confirm unto the said Mortgagee his Heirs and Assigns, ALL THAT CERTAIN *lot or piece of ground with the two story brick messuage or tenement thereon erected (No. 5649)* SITUATE on the North Side of W. Avenue at the distance of

*Three hundred and ninety-two feet Westward from the West side of Fifty-sixth Street in the Forty-sixth Ward of the City of Philadelphia aforesaid. CONTAINING in front or breadth on the said W. Avenue fifteen feet and extending of that width in length or depth Northward between parallel lines at right angles to said W. Avenue, Sixty feet to a certain three feet wide alley which extends Eastward and Westward and communicates at each end thereof with a certain other three feet wide alley leading Southward and Northward from W. Avenue to P. Street.*

BEING the same premises which G. C. T. and wife by Indenture bearing even date herewith and intended to be forthwith recorded, granted and conveyed unto the said M. N. in fee.

UNDER AND SUBJECT to the payment of a certain mortgage debt of One thousand seven hundred Dollars made by W. A. W. D. to E. P. D. dated July 18th, 1906 and Recorded in Mortgage Book W. S. V. No. 900 page 395 since reduced to the sum of Fifteen hundred Dollars.

TOGETHER with the free and common use, right, liberty and privilege of the aforesaid alleys as and for passage ways and water courses at all times hereafter forever.

AND.

TOGETHER with all and singular the Buildings and improvements, Ways, Waters, Water-Courses, Rights, Liberties, Privileges, Improvements, Hereditaments and Appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof,

TO HAVE AND TO HOLD the said lot or piece of ground above described with the two story brick messuage or tenement thereon erected, Hereditaments and Premises hereby granted, or mentioned and intended so to be, with the Appurtenances, unto the said Mortgagee his Heirs and Assigns, to and for the only proper use and behoof of the said Mortgagee his Heirs and Assigns forever.

UNDER AND SUBJECT nevertheless to the above mentioned Mortgage debt of One Thousand Five Hundred Dollars with interest thereon.

PROVIDED ALWAYS, nevertheless, that if the said Mortgagors, their Heirs, Executors, Administrators or Assigns, do and shall well and truly pay, or cause to be paid, unto the said Mortgagee his Executors, Administrators or Assigns, the aforesaid debt or principal sum of Six Hundred Dollars on the day and

time hereinbefore mentioned and appointed for payment of the same, together with interest as aforesaid, and shall produce to the said Mortgagee or *his* Executors, Administrators or Assigns, on or before the *First* day of *December* of each and every year, receipts for all taxes and water rates of the current year assessed upon the mortgaged premises, and shall keep and maintain said *fire* insurance so assigned as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of any thing, herein mentioned to be paid or done, that then, and from thenceforth, as well this present INDENTURE, and the estate hereby granted, as the said recited Obligation shall cease, determine and become void, any thing hereinbefore contained to the contrary thereof, an any wise notwithstanding. AND PROVIDED ALSO, that it shall and may be lawful for the said Mortgagee *his* Executors, Administrators or Assigns, when and as soon as the principal debt or sum hereby secured [*or any installment thereof*] shall become due and payable as aforesaid, or in case default shall be made for the space of *thirty* days in the payment of interest on the said principal sum, [*or any installment thereof*] after any payment thereof shall fall due, or in the prompt and punctual maintenance of said *fire* insurance so assigned as aforesaid, or in case there shall be default in the production to the said Mortgagee or *his* Executors, Administrators or Assigns, on or before the *first* day of *December* of each and every year, of such receipts for such taxes and water rates of the current year assessed upon the mortgaged premises, to sue out forthwith a writ or writs of Scire Facias upon this Indenture of Mortgage, and to proceed thereon to judgment and execution, for the recovery of the whole of said principal debt, and all interest due thereon, together with an attorney's commission for collection, viz: *five* per cent., besides costs of suit, without further stay, any law, usage or custom to the contrary notwithstanding.

IN WITNESS WHEREOF, the said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

SEALED AND DELIVERED  
in the presence of us:  
T. N. W.,  
W. M. N.

}

J. N. (Seal.)  
M. N. (Seal.)



ON THE *Seventeenth* day of *August*, Anno Domini 1910, before me, the subscriber a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared the above-named *J. N. and M. his Wife* and in due form of law acknowledged the above INDENTURE OF MORTGAGE to be *their* act and deed, and desired the same might be recorded as such.

WITNESS my hand and *Notarial* seal the day and year aforesaid.

T. N. W.,  
Notary Public.  
*Commission expires, etc.*

### Bond to Accompany Above Mortgage

KNOW ALL MEN BY THESE PRESENTS, THAT *We, J. N., of the City of Philadelphia and M. his Wife* (hereinafter called the Obligors), are held and firmly bound unto *G. C. T., of said City, Merchant* (hereinafter called the Obligee), in the sum of *One thousand Two hundred Dollars* lawful money of the United States of America, to be paid to the said Obligee *his* certain Attorney, Executors, Administrators or Assigns: to which payment well and truly to be made, *we* do bind and oblige *ourselves, our* Heirs, Executors and Administrators, firmly by these Presents. Sealed with *our* Seals Dated the *Seventeenth* day of *August* in the year of our Lord one thousand nine hundred and *ten* (1910).

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above-bounden Obligors *their* Heirs, Executors or Administrators, or any of them, shall and do well and truly keep and maintain at all times, until the full discharge of this Obligation, a *fire* policy or policies of insurance, in good and approved company or companies, duly assigned as collateral to the Obligee or *his* Executors, Administrators or Assigns, to an amount not less than *Six hundred Dollars*, upon the buildings on the premises mortgaged by the Mortgage securing this Obligation, and shall and do well and truly pay, or cause to be paid unto the above-named Obligee *his* certain Attorney, Executors, Administrators or Assigns, the just sum of *Six hundred Dollars* lawful money as aforesaid, [*within six years from the date hereof in installments of not less than One Hundred Dollars per year*] together with interest payable *semi-annually* at the rate of *six* per cent. per

annum, without any fraud or further delay; and shall produce to the said Obligee or *his* Executors, Administrators or Assigns, on or before the *first* day of *December* of each and every year, receipts for all taxes and water rates of the current year assessed upon the mortgaged premises; then the above Obligation to be void, or else to be and remain in full force and virtue: PROVIDED, however, and it is hereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid, *or of any installment* for the space of *thirty* days after any payment thereof shall fall due, or in the prompt and punctual maintenance of said *fire* insurance so assigned as aforesaid, or in such production to the Obligee or *his* Executors, Administrators or Assigns, on or before the *first* day of *December* of each and every year, of such receipts for such taxes and water rates of the current year upon the premises mortgaged, then and in such case the whole principal debt aforesaid, shall, at the option of the said Obligee *his* Executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, any thing herein contained to the contrary notwithstanding. AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that if at any time hereafter by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum, at maturity, or of said interest, or in production of said receipts for taxes and water rates, within the time specified, a writ of Fieri Facias is properly issued upon the Judgment obtained upon this Obligation, or by virtue of the warrant of attorney hereto attached, or a writ of Scire Facias is properly issued upon the accompanying Indenture of Mortgage, an attorney's commission for collection, viz: *five* per cent., shall be payable, and shall be recovered in addition to all principal and interest then due, besides costs of suit.

SEALED AND DELIVERED  
in the presence of us:  
F. N. W.,  
W. N. N.

M. N. (Seal.)  
J. N. (Seal.)

To Esq., Attorney of the Court of  
Common Pleas, at Philadelphia, in the County of Philadelphia, in the State of Pennsylvania, or to any other Attorney of the said Court, or any other Court there or elsewhere.

WHEREAS, *J. N. and M. his Wife* in and by a certain Obligation, bearing even date herewith, do stand bound unto *G. C. T.* in the sum of *One Thousand Two Hundred Dollars* lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of the said Obligation, a *fire* policy or policies of insurance, in good and approved company or companies, duly assigned as collateral to the Obligee or *his* Executors, Administrators or Assigns, to an amount not less than *Six Hundred Dollars*, upon the buildings on the premises mortgaged by the Mortgage securing the said Obligation, and conditioned for the payment of the just sum of *Six Hundred Dollars* lawful money as aforesaid, [*within six years from the date thereof in installments of not less than One hundred Dollars per year*] together with interest payable *semi-annually* at the rate of *six* per cent. per annum, and for the production to the Obligee or *his* Executors, Administrators or Assigns, on or before the *first* day of *December* of each and every year, of receipts for all taxes and water rates of the current year assessed upon the premises described in the Mortgage accompanying said Obligation:

PROVIDED, however, and it is thereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid, [*or of any installment*] for the space of *thirty* days after any payment thereof shall fall due, or in the prompt and punctual maintenance of said *fire* insurance so assigned as aforesaid, or in such production to the Obligee or *his* Executors, Administrators or Assigns, on or before the *first* day of *December* of each and every year, of such receipts for such taxes and water rates of the current year assessed upon the premises described in the Mortgage accompanying said Obligation, then and in such case the whole principal debt aforesaid, shall, at the option of the said Obligee *his* Executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, any thing therein contained to the contrary notwithstanding. AND PROVIDED FURTHER, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum, at maturity, or of said interest, or in production of said receipts for taxes and water rates within the time specified, a writ of *Fieri Facias* is properly issued upon the Judgment

obtained upon said Obligation, or by virtue of this warrant, or a writ of Scire Facias is properly issued upon the accompanying Indenture of Mortgage, an attorney's commission for collection, viz: *five* per cent., shall be payable, and shall be recovered in addition to all principal and interest then due, besides costs of suit. THESE are to desire and authorize you, or any of you, to appear for *us, our* Heirs, Executors or Administrators, in the said Court or elsewhere, in an appropriate form of action there or elsewhere brought or to be brought against *us, our* Heirs, Executors or Administrators at the suit of the said Obligee *his* Executors, Administrators or Assigns, on the said Obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against *us, our* Heirs, Executors or Administrators, for the sum of *Twelve Hundred Dollars* lawful money of the United States of America, debt, besides costs of suit, and an attorney's commission of *five* per cent. in case payment has to be enforced by process of law as aforesaid, by Non sum informatus, Nihil dicit, or otherwise, to you shall seem meet: And for your, or any of your so doing, this shall be your sufficient warrant. And *we* do hereby for *us, our* Heirs, Executors or Administrators, remise, release and forever quit claim unto the said Obligee *his* certain Attorney, Executors, Administrators and Assigns, all and all manner of error and errors, misprisions, misentries, defects and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

IN WITNESS WHEREOF, *We* have hereunto set *our* hands and seals this *Seventeenth* day of *August* in the year of our Lord one thousand nine hundred and ten (1910).

SEALED AND DELIVERED	}		
in the presence of us:			
F. N. W.,		M. N.	(Seal.)
W. N. N.		J. N.	(Seal.)

See note to the mortgage immediately preceding page 379.

## 262. Leasehold Mortgage.\*

THIS INDENTURE, made the Tenth day of June, A. D. 1902, between ADAM JONES and ERNEST BROWN of the first part, who

\*See note at end of this lease form, page 388.

by bond of this date stand indebted to CHARLES DOE of the second part, in the sum of \$1,000, conditioned for the payment of \$500, as follows:

WITNESSETH, That in consideration of the debt above mentioned, and to better secure the payment thereof, with interest, &c., said parties of the first part do hereby give, grant, sell and convey to said party of the second part his heirs and assigns, all that certain leasehold estate, situated in Rockill Township, Bucks County, and State of Pennsylvania, being a part of the Smith farm, and bounded and described as follows: (here set out the description of leased premises).

The original lease whereof bearing date the 30 day of April, A. D. 1902, between ROBERT SMITH and ADAM JONES and ERNEST BROWN, is recorded in the recorder's office of said county of Bucks, in Deed Book No. 301, page 172. (Note.—If the Lease has not yet been recorded, insert after names of parties "is intended to be recorded herewith," instead of foregoing clause); together with all machinery and fixtures thereon, Steam boiler, Corliss engine, Water tank, 300 feet of tubing, 50 feet of casing, 12 feet of sucker rods, enginehouse, derrick and all tools thereon, and all and singular the appurtenances thereto belonging. To have and to hold the said premises, with the appurtenances thereto, unto said party of the second part, his heirs and assigns forever. Provided, that if the parties of the first part, their heirs, executors, administrators or assigns, pay to the party of the second part, his heirs, executors, administrators or assigns, said sum of \$500, according to the condition of the above in part recited bond, then these presents and the estate hereby granted shall cease and be utterly void.

Provided further, in case of default of any payment, thereupon it shall be lawful for the said mortgagee or his legal representatives, to sue out forthwith a writ or writs of scire facias (any law, usage or practice to the contrary notwithstanding; upon which scire facias, when so sued out, either before or after service of same, judgment may be confessed, with or without declaration filed, by any attorney of any court of record, in favor of said mortgagee, his heirs or assigns, and against the said Mortgagors,) for the whole amount of the debt and interest thereby secured which then remains unpaid, to which may be added five per cent. on the whole sum as attorney's fees for collecting the same, upon which judgment execution may be issued

for any payment or payments and interest then due. And thereafter execution may be issued upon said judgment as often as default shall be made in the payment of debt on interest, or both. Also the parties of the first part waive all equity of redemption under any Act of Assembly now in force, and all exemption laws of this Commonwealth.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above-written.

Signed, sealed and delivered	}		
in the presence of us,		ADAM JONES.	(Seal.)
ANDREW JACKSON,		ERNEST BROWN.	(Seal.)
HENRY HAAS.			

BUCKS COUNTY, ss:

On the Tenth day of June, A. D. 1902, before me the subscriber a Notary Public for the Commonwealth of Pennsylvania, residing in Doylestown personally appeared ADAM JONES and ERNEST BROWN, who in due form of law acknowledged the above Indenture of Mortgage to be their act and deed and desired the same to be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

ANDREW JACKSON,  
*Notary Public.*  
 (Seal.)

Commission expires Feb. 1, 1905.

The original lease as well as this mortgage must be recorded in the recorder of deeds' office of the county wherein the land lies. Be careful to see that the lease is acknowledged else it cannot be recorded.

The lease must be recorded either before or at the same time as the mortgage. The mortgage should be recorded immediately after execution.

### 263. Release of Mortgage.

See form, paragraph 99, page 132.

### 264. Release of Lien of Judgment.

W. F. C.	}	In the Court of Common Pleas for Philadelphia County. June Term, 1904. No. 441.
vs.		
F. G. D.		

I, F. G. D., the plaintiff in the above stated Judgment at the request of W. F. C. the defendant therein, and for and in consideration of the sum of One (\$1.00) Dollar to me in hand paid by the said W. F. C. at the time of the execution hereof, the receipt whereof is hereby acknowledged, do for myself, my heirs, executors, and administrators, covenant, promise and agree to and with the said W. F. C. his heirs and assigns by these presents, that I will not at any time hereafter sell or dispose of, attach or levy upon, or claim or demand the premises hereinafter described, with the appurtenances, to wit:

ALL THAT CERTAIN triangular lot or piece of ground with the two story building thereon erected, SITUATE at the intersection of the North West Corner of Moyamensing Avenue and the South West Corner of Jackson Street in the First Ward of the City of Philadelphia, CONTAINING in front on the said Moyamensing Avenue sixty-two feet eleven and three-fourths inches and on Jackson Street ninety feet five and three-eighths inches and at the rear end thirty-six feet or any part thereof, by virtue of the said Judgment so that the said W. F. C. his heirs and assigns shall and may hold the same free and clear of and from the lien of the said Judgment, provided, however, that nothing herein contained, shall invalidate the lien or security of the said Judgment upon the other estate of the said W. F. C.

IN WITNESS WHEREOF I have hereunto set my hand and seal this                      day of December, A. D. one thousand nine hundred and four (1904).

Sealed and Delivered in  
the presence of us  
M. A. B.,  
F. T. D.

F. G. D.      (Seal.)  
\_\_\_\_\_      (Seal.)

This release should be filed in the prothonotary's office as to the term and number of the judgment.

## 265. Recital of Title by Deed.

See form, paragraph 54 F, page 70. Recitals by deed are placed immediately after the description, see form of deed paragraph 53, page 64. Where however the recital is very long it is customary to place it after the names of the parties immediately before the granting clause as in deed forms par. 234, 235.

**266. Another Form for Recital of Title by Deed.**

Being the same (or, part of the same) premises which Edward Fell, and Mary, his wife, indenture, bearing date the Fifth day of July, A. D. one thousand nine hundred and ten, (recorded in the office for the Recording of Deeds, in and for the County of Philadelphia, in Deed Book, No.       , page       ), did grant and confirm unto the said ADAM BROWN, party hereto, and to his heirs and assigns for ever, as in and by the said in part recited indenture, relation being thereunto had, more fully and at large appears.

**267. Recital of Title by Patent.**

WHEREAS, The Commonwealth of Pennsylvania, by patent or grant under the great seal, bearing date the Fifth day of January, A. D. one thousand eight hundred and nine, for the consideration therein mentioned, did grant or confirm unto ADAM BROWN, and to his heirs and assigns, a certain tract of land, situate in the Township of       , in the County of       aforesaid, by marks and bounds in said patent particularly described, containing       acres and the allowance of six per cent. for roads, &c., with the appurtenances: To hold the said to him, his heirs and assigns forever, as in and by the said recited patent (recorded in the Land Office, in Patent Book B, page       ), relation being thereunto had, more fully and at large appears.

**268. Recital of Title by Will.**

See form of Recital in Devises deed paragraph 170, page 202. This recital is also usually placed immediately after the description, though often when such recital is lengthy it is placed immediately after the names of parties, see deed form, paragraph 234, page 290.

**269. Recital of Title by Descent.**

See form of Recital of one inheriting by descent, paragraph 138, page 181. See remarks in preceding paragraph (268) as to the position of this recital.

**270. Another Form of Recital of Title by Descent.**

WHEREAS by force and virtue of said recited indenture, or of some other good conveyances or assurances in the law duly had and executed, the said ADAM BROWN became, in his lifetime, law-



fully seised in his demesne, as of fee, of and in the said tract of land, with the appurtenances, and being so thereof seised, died intestate, leaving issue four children, to wit, HENRY, JOHN, MARIA (the wife of J. R.), and ANDREW, to whom the same, by the laws of Pennsylvania relating to intestates, did descend and come.

**271. Recital of Title by Patent, Descent and Deed.**

Being the same tract of land which the Commonwealth of Pennsylvania, by patent, bearing date the First day of June, A. D. on thousand nine hundred and three (recorded in the Land Office for the State of Pennsylvania, in Patent Book C, page           ), for the consideration therein mentioned, did grant and confirm unto B. W. in fee, who being thereof lawfully seised, died intestate, leaving issue M. W. and D. intermarried with R. D., to whom the same, by the laws of Pennsylvania, did descend and come. And the said M. W. and R. D. and D., his wife, by their joint indenture, bearing date the            day of           , A. D. One thousand nine hundred and           , for the consideration therein mentioned, did grant and confirm the same unto the said ADAM BROWN, (party hereto) in fee, as in and by the said indenture (recorded in the office for recording of deeds at           , in Book B, Page           ), relation being thereunto had, appears.

**272. Recital of Title by Adverse Possession.**

Being the same premises which Jonathan Wall by Indenture bearing date the First day of January, 1871, and recorded at Philadelphia in deed book T. M. No. 16, page 321, &c., granted and conveyed unto Andrew Smith in fee. And Thomas Bayard on to wit, June 17, A. D. 1882, entered into possession and by virtue thereof held actual adverse, continued, visible notorious, distinct and hostile possession thereof unto the present time, being a period of more than forty years, so that a perfect and indefeasible title in fee to said premises became vested in the said Thomas Bayard, by virtue of the statute of limitations of the Commonwealth of Pennsylvania.

**273. Recital of Title by Voluntary Deed of Partition.**

AND WHEREAS, by indenture of partition between the said ADAM BROWN of the one part, and the said GEORGE HERMAN of

the other part, bearing date the Fifth day of September, A. D. one thousand nine hundred and two, partition of the said mesuage, &c., with the appurtenances, was made between the said parties, wherein and whereby the piece or parcel thereof, bounded and limited as follows, to wit: Beginning, &c., containing acres and allowances aforesaid, was released and confirmed to the said GEORGE HERMAN, his heirs and assigns: To hold to him, the said GEORGE HERMAN, his heirs and assigns, in severalty forever, as in and by the said indenture of partition (recorded in the office for recording of deeds at \_\_\_\_\_, in Book E, page \_\_\_\_\_), relation being thereunto had, appears.

**274. Recital of Title by Order of Orphans' Court in Partition.**

Being the same premises of which ADAM BROWN, died intestate, and upon which, on due application to the Orphans' Court for the County of \_\_\_\_\_ of April Term 1902, No. 94, an order was granted by the said court, whereupon the said premises were duly valued and appraised, and by the said court adjudged and confirmed on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. one thousand nine hundred and \_\_\_\_\_, unto the said G. B., eldest son of the said deceased (or, as the case may be): To hold the same to the said G. B., and to his heirs and assigns forever, as in and by the records and proceedings of the said court, relation being thereunto had, appears.

**275. Recital of Title by Writ of Partition.**

AND WHEREAS by virtue of a certain writ de partitione facienda, issuing out of the Court of Common Pleas for the County of \_\_\_\_\_ aforesaid, of September Term, 1902, No. 35, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, A. D. one thousand nine hundred and \_\_\_\_\_, for partition of the said tract of land, with the appurtenances, there was duly allotted and assigned unto the said GEORGE HERMAN, a certain piece or parcel of land (part of the said tract) bounded and described as follows, viz., beginning at, &c., containing \_\_\_\_\_ acres and allowance aforesaid, with the appurtenances: To hold the same to him, the said GEORGE HERMAN, his heirs and assigns, in severalty forever, as by the said writ de partitione facienda, and return of the sheriff thereupon duly made, and remaining amongst the records and proceedings of the said court, recourse being thereunto had, appears.

**276. Recital of Title by Attorney in Fact.**

And whereas the said CHARLES RYAN, by his attorney JOSEPH ROGERS (by letter of attorney, under the hand and seal of the said CHARLES RYAN, bearing date the Fifth day of January, A. D. one thousand nine hundred and one, recorded in the office for recording deeds for the City and County of Philadelphia, in Letter of Attorney Book, No.      , Page      ), did, by indenture, bearing date the      day of      , A. D. one thousand nine hundred and      , and recorded in the office for the recording of deeds in and for the county of      in Deed Book No.      page      , etc., grant and convey unto George Hartman in fee.

**277. Recital of Title by Executors.**

And whereas the said A. R. and E. R. executors of the last will and testament of the said I. L., deceased, by virtue of the power and authority to them given by the said will, and pursuant to the direction thereof, did, by indenture, under their hands and seals, bearing date the Sixth day of January, A. D. one thousand nine hundred and One, for the consideration therein mentioned, grant and confirm unto E. G., and to his heirs and assigns, all that the said message or tenement and tract of      acres of land, with the appurtenances: To hold the same to him, his heirs and assigns, forever, as in and by the said recited indenture (recorded in the office for the recording of deeds at in book B, page      ), relation being thereunto had, appears.

**278. Recital of Title by Administrator.**

And whereas, C. D., Administrator of all and singular the goods and chattels, rights and credits, which were of the said ADAM BROWN, at the time of his death, who died intestate, by virtue and in pursuance of an order of the Orphans' Court of the said County of      , for the sale of the real estate of the said intestate, of October Term, 1910, No. 15, by indenture under the hand and seal of the said C. D., bearing date the      day of      , A. D. one thousand nine hundred and ten, for the consideration therein mentioned, did grant and confirm unto FRED GREEN, and to his heirs and assigns, all that the said above-mentioned and described tract of      acres and allowance aforesaid, with the appurtenances: To hold the same to him, his heirs and assigns, forever, as in and by the said last recited in-

denture (recorded in the office for recording of deeds, an and for the county of \_\_\_\_\_, in Book No. \_\_\_\_\_, Page \_\_\_\_\_), relation being thereunto had, appears.

**279. Recital of Title by Sheriff's Sale.**

And whereas H. L., High Sheriff of the County of Philadelphia aforesaid, by deed poll, under his hand and seal, bearing date the First day of June, A. D. one thousand nine hundred and two, recorded (in the Prothonotary's office of the Court of Common Pleas No. 2, for the City and County of Philadelphia, in Sheriff's Deed Book M No. 3, page 295, &c.)\* for the consideration therein mentioned, by virtue of a certain writ of venditioni exponas or (Levari Facias, as the case may be) therein recited, granted and confirmed unto C. G., and to his heirs and assigns, the said premises above described, late the estate of the said ADAM BROWN, with the appurtenances: To hold the same to the said C. G., his heirs and assigns forever, according to the Act of General Assembly in such case made and provided, as by the said recited deed poll, duly acknowledged, and entered among the records of the Court of Common Pleas of the said county, relation being thereunto had, appears.

\*Since the Act of April 22, 1905, Sec. 1, P. L. 265, the sheriff is required to record his deeds after execution at the office for recording of deeds of the proper county, so that a recital of a sheriff's deed after that act should read "And recorded in the office for recording of deeds in and for the County of Philadelphia, in deed book No. —, page —, etc." Under the provision of the act of 1905 sheriff's deeds are no longer recorded in full in the prothonotary's office, only a certificate thereof is there recorded.

**280. Recital of Title by Sheriff for Property of a Decedent.**

It being the same lot of ground, No. \_\_\_\_\_, which E. H., High Sheriff of the County of \_\_\_\_\_, by deed poll, under his hand and seal, bearing date the Sixteenth day of July, A. D. one thousand nine hundred and four, for the consideration therein mentioned, did (as late the estate of S. G.) grant and confirm unto the said C. L., party hereto, in fee, as in and by the said deed poll entered among the records of the Court of Common Pleas for the County of \_\_\_\_\_ (and recorded in the office for recording of deeds at in Deed Book J. V. No. 321, Page 42), relation being thereunto had, appears.

**281. Recital in Purchase-Money Mortgage, Given to a Third Party.**

Being the same premises which WILLIAM STONE by indenture bearing even date herewith, but executed and delivered before these presents, and intended forthwith to be recorded, for the consideration therein mentioned, part whereof has been advanced by CHARLES DOLAN, and is intended to be hereby secured, granted and conveyed unto the said ISAAC LONG in fee: the said WILLIAM STONE having assigned his right to a purchase-money mortgage unto the said CHARLES DOLAN.

**282. Recital of Executor's or Administrator's Deed for Land Sold at of May 9, 1889 (P. L. 182), as Amended by Act of June 9, Private Sale for Payment of Decedent's Debts Under the Act 1911 (P. L. 724).**

WHEREAS, W. W. B. was in his life time lawfully seised in his demesne as of fee, of and in the lot or piece of ground and premises hereinafter particularly described with the appurtenances and being so thereof seised as aforesaid departed this life on the first day of December, A. D. 1910, having first made and published his last Will and Testament in writing bearing date the 24th day of December, A. D. 1909, duly proven the 15th day of January, A. D. 1911, and registered in the Office of the Register of Wills in and for the City and County of Philadelphia in Will Book No. 382, page 136, &c.

WHEREIN and WHEREBY after directing the payment of his just debts and funeral expenses he, the said W. W. B., did will and direct as follows:—

“Second, I give, devise and bequeath unto my beloved wife, R. A., her heirs and assigns forever all my property, real, personal and mixed of what nature or kind soever and wheresoever the same shall be at the time of my death.”

AND WHEREAS, R. A. B. being so lawfully seised in her demesne as of fee of the premises hereinafter particularly described

\*The Act of June 9th, 1911, P. L. 724, requires that before the orphans' court shall authorize, decree or approve a private sale of real estate for payment of a decedent's debts, notice must be advertised in at least one newspaper and in the legal periodical, if any, designated by the court for the publication of legal notices published in the county where the real estate is located. Written or printed notices must also be posted on the premises and at at least three most public places in the vicinity. In drawing a deed for real estate so sold, compliance with this act should be recited as in the above form.

with the appurtenances, departed this life on the fifth day of March, A. D. 1911, having first made and published her last Will and Testament in writing bearing date the second day of October, A. D. 1910, and duly proven the thirteenth day of March, A. D. 1911, and registered in the Office of the Register of Wills in and for the city and county of Philadelphia, in Will Book No. 326, page 129, &c.

WHEREIN and WHEREBY after directing the payment of her just debts and funeral expenses she the said R. A. B. did will and direct as follows:—

“Second, All the rest, residue and remainder of my estate, real, personal and mixed of whatsoever kind and wheresoever situate, I give and devise and bequeath unto my children and my two grandchildren, namely, L., daughter of my son, W. W. B., Jr., deceased, and E., daughter of my deceased daughter, M. S., their heirs and assigns, to be equally divided between them, share and share alike.”

“Third,” “I nominate, constitute and appoint T. F. B. to be the executor of this my last Will and Testament.”

AND WHEREAS, At an orphans' court for the city and county of Philadelphia, held on the first day of October, A. D. 1911, the petition of T. F. B., executor of the estate of R. A. B., deceased, was presented, SETTING FORTH “That the said R. A. B. was seised in her demesne as of fee of the hereinafter described premises.” “That there are not sufficient personal assets to pay the claims due from the estate of said decedent to the creditors thereof.” That all persons and parties interested in said real estate being sui juris or by guardian have consented to the sale of the hereinafter described premises. That the petitioner has been unable to dispose of said premises at public sale for a fair or market price. That G. L. has offered to purchase the said real estate hereinafter described for the price or sum of twenty-five hundred (\$2500.00) dollars clear of all encumbrances and all the owners of said real estate have agreed to sell at said price and that proper and necessary deeds and assurances for said real estate should be executed to the said G. L. and a perfect title for the same made to him for the payment of debts of the decedent, R. A. B.

The petitioner therefore prayed the court to approve of the price offered for said real estate and authorize petitioner to sell said real estate to G. L. for the price and sum of twenty-five

hundred (\$2500.00) dollars for the payment of debts of the decedent, R. A. B.

WHEREUPON after due advertising and notice to all heirs, creditors and parties in interest in accordance with the Act of the General Assembly approved June 9, 1911, in such case made and provided, the court, on the 16th day of October, A. D. 1912, upon due consideration of the said petition, ordered, adjudged and decreed that the petitioner is authorized hereby to sell the property described in the petition at private sale to G. L. for the price or sum of twenty-five hundred (\$2500.00) dollars in accordance with the contract of sale attached to and made part of the said petition for the payment of debts of the said decedent; it having been shown to the court that due notice of the filing of said petition has been given in accordance with the Act of June 9th, 1911, by advertising for twenty days prior to the presentation of this petition to the court and by posting notice of said application on the property and in three of the most public places in the vicinity thereof.

Security to be entered by the petitioner in the sum of five thousand (\$5,000.00) dollars, which security has been duly entered in the orphans' court on November 1st, 1912.

Now this Indenture Witnesseth, &c., &c., (here follows rest of deed, see forms, par. 234, 235).

**283. Other Recitals.**

For other Recitals of Title under various Court proceedings, etc., consult carefully the Deed Forms, paragraphs 234, 235.

**284. Form of Will.**

See form, paragraph 163, page 196.

**285. Clause of Will Giving Executor Power and Directing Him to Sell Real Estate.**

I order and direct my executor hereinafter named to sell all my real estate at public or private sale (without any liability of purchasers for the application, non-application or misapplication of purchase money)\* and upon any such sale thereof I order

\*Since the Act of June 10, A. D. 1911, Sec. 1, P. L. 874, now relieves purchasers of executors and trustees under a will from the obligation of seeing to the application of the purchase money, the clause in brackets may now be omitted.

and direct my said executor to distribute and pay the net proceeds of sale as follows, viz :

**286. Codicil.**

See form, paragraph 164, page 197.

**287. Form of Codicil for a Child Born After Date of Will.**

I, EARL GREEN, do hereby make this a codicil to my last will and testament, dated the Twenty-fourth day of November, 1906, viz : My son, Charles, having been born after the date of said will, I do hereby provide for and give, devise and bequeath unto him and his heirs in fee simple and absolutely one-fourth part and share of all my estate, real, personal and mixed, and so that he shall have and receive an equal part of my said estate with my other children in lieu of any share he may have under the intestate laws, and I reduce and revoke the shares of my other children accordingly, so as to provide for said share for my son, Charles, and I appoint my wife as guardian of his person and estate and with this change and in all other respects I do confirm my said will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this first day of October, A. D. 1912.

EARL GREEN. (Seal.)

Signed, Sealed, Published, and Declared by the above-named EARL GREEN, as and for his last will and testament, in the presence of us, who have hereunto subscribed our names at his request as witnesses thereto in the presence of the said testator, and of each other.

WILLIAM LONG, 3452 X St., Phila., Pa.

ALBERT STRONG, 131 Y St., Phila., Pa.

It is good practice to have subscribing witnesses of both wills and codicils. Write their addresses after their signatures.

It is not necessary that a provision for an afterborn child actually leave a portion of the testator's estate to him; it is only necessary to show that the testator had the afterborn child in mind when he made the codicil or will; thus in *Randall v. Dunlop*, 218 Pa. 210, the following provision was held to be sufficient: "Afterborn children are herein provided for." (See Par. 168, page 201). "The question whether the provision is large, small, equal or unequal, vested or contingent, present or future is irrelevant." (*Newlin's Estate*, 209 Pa. 456.)



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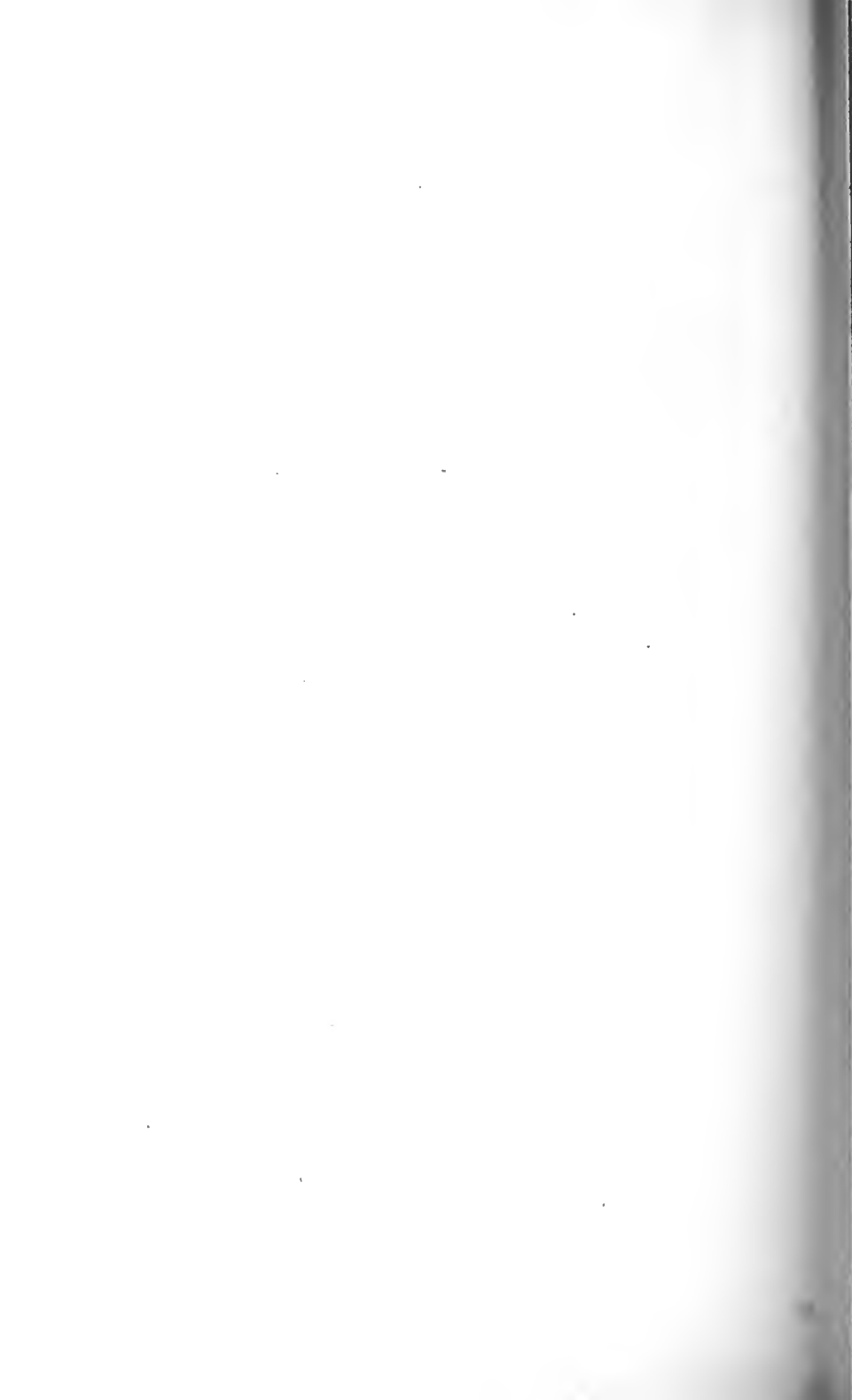
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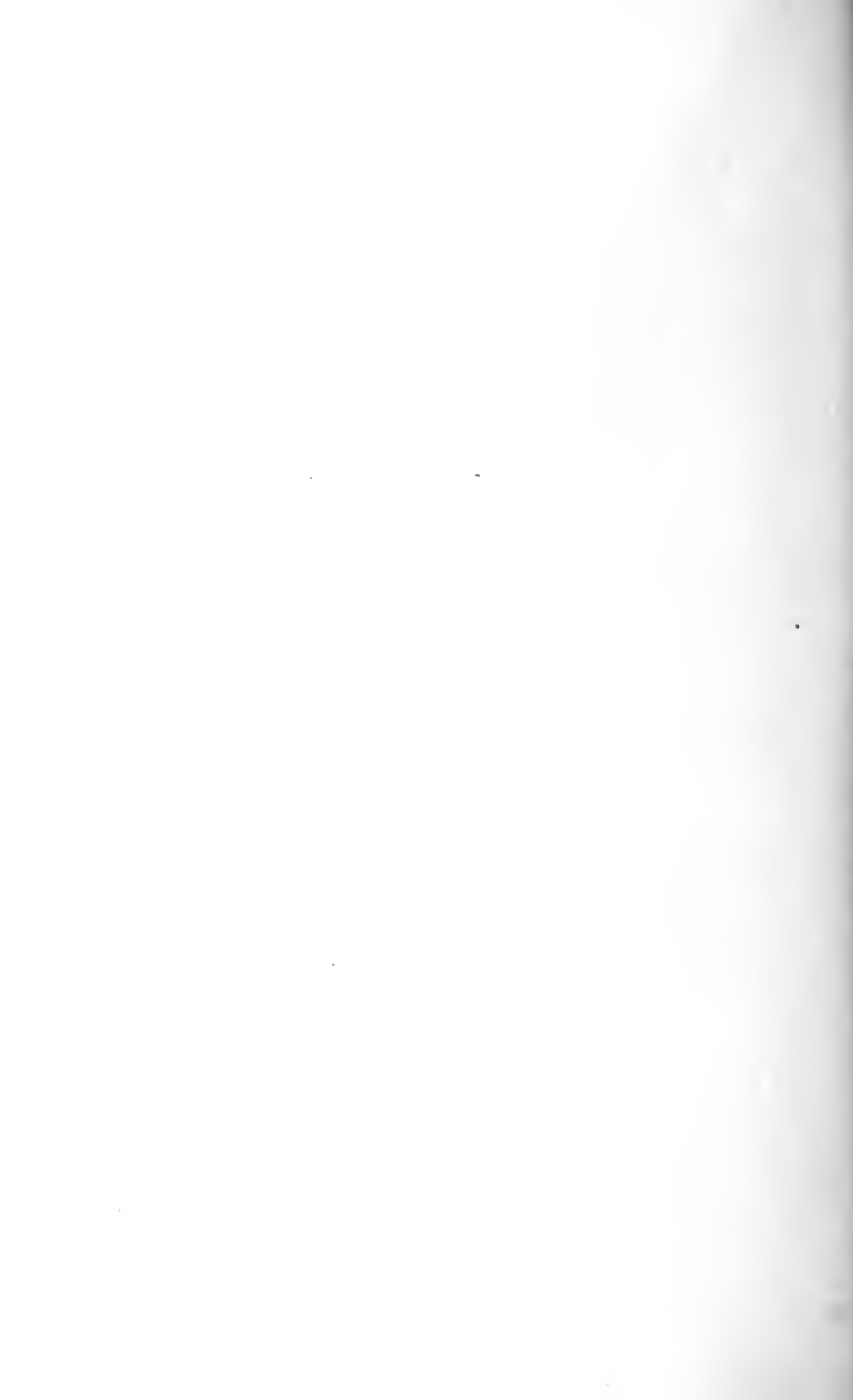
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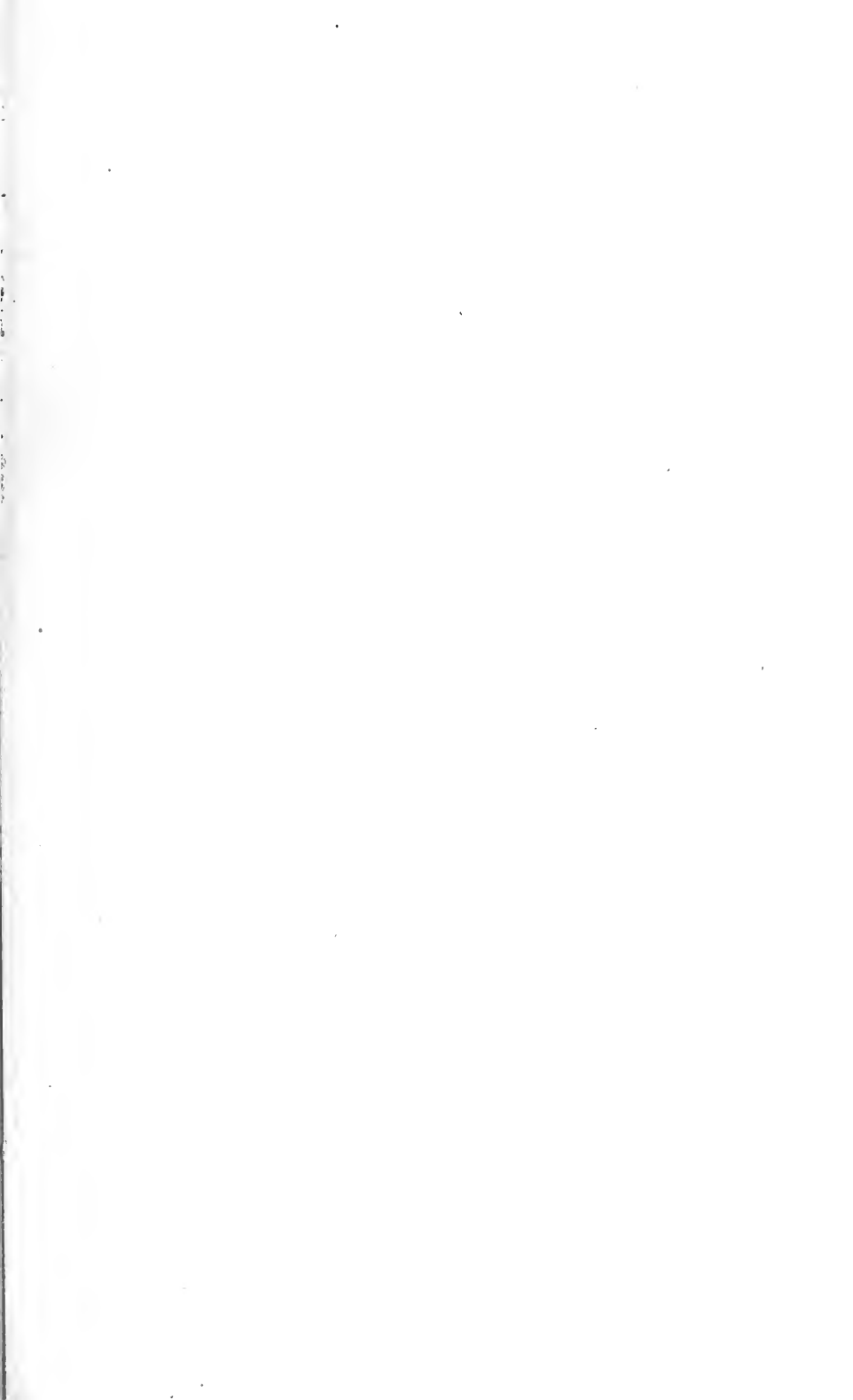
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